

CEQA & the People's Voice Developer Ballot Measures

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Tuolumne Case

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- ▶ *Tuolumne Jobs & Small Bus. All. v. Superior Court*
59 Cal. 4th 1029, 1036 (2014)
- ▶ It is well established that CEQA compliance is not required before a legislative body submits an initiative *to voters* under section 9214(b).
- ▶ The question here is whether the result should be different in the direct adoption context.
- ▶ That is, must the legislative body obtain full CEQA review before it may directly adopt a voter initiative under section 9214(a)? The answer is NO.

Why pursue *Tuolumne* strategy?

- ▶ Avoid or minimize CEQA review, aka the “*Tuolumne* strategy”
 - ▶ Avoid CEQA litigation (*but* see below re other legal challenges)
- ▶ Lock-in favorable conditions of approval
- ▶ Political: are there the votes on the Council?
- ▶ Race to the ballot

Development By Initiative

- ▶ Initiatives proposing developments very complex (SP, GP, zoning, etc)
- ▶ Longer (300-plus pages and more)
- ▶ Much more sweeping than a single change initiative (height or sq. ft. limits)
- ▶ Yet timeframes remain the same

CEQA vs. Elections Code

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- ▶ *Tuolumne* case confirms: initiatives are excluded from CEQA, even when approved by council
- ▶ 9212 Report is exclusive vehicle to examine impacts
- ▶ No ability to make changes to project
- ▶ Statutory deadlines require careful planning

CEQA vs. Elections Code

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CEQA

- ▶ LEGAL
- ▶ Iterative process
- ▶ Can require conditions
- ▶ Mitigation required
- ▶ No defined timeframe
- ▶ Public involvement: scoping, hearings, review process

Elections Code

- ▶ LEGAL
- ▶ Linear process
- ▶ No conditions allowed
- ▶ No provision for mitigation
- ▶ Strict deadlines
- ▶ Public involvement: signatures, voting, referendum

Development Initiatives

- ▶ Prepare to take to Council early
- ▶ Elections Code 9212 allows for preparation of report “during the circulation of the petition”
- ▶ Line up resources in advance
- ▶ Map out strategy and timing
 - ▶ What is your regular meeting schedule?

9212 Report

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- ▶ There is no standard for 9212
 - ▶ 20 pages – 250 pages
- ▶ May address any or all listed topics
 - ▶ Or anything else
- ▶ Don't underestimate level of effort
- ▶ Multi-departmental coordination
- ▶ Write so Council and public can easily understand

This Is Legal

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- ▶ “Reserved power”
- ▶ Jealously guarded by courts
- ▶ Not “circumventing” the law
- ▶ Exercising initiative power to enact legislation
- ▶ Specific Plans/Development Agreements, etc. are legislative

Ballot Title and Summary

- ▶ Elections Code 9203 allows 500 words or less to express the purpose of the proposed measure in a way that does not create an argument for or against the measure.
- ▶ What is most important for the public to know?

“To Be Submitted Directly to the Voters”...or not

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- ▶ Election Code 9203 sets forth the heading of the measure to include: “Initiative Measure to Be Submitted Directly to the Voters”
- ▶ Election Code 9214 states council can directly adopt
- ▶ Public called it misleading, a contract, fraud, etc. Legislative fix?

Information or Advocacy?

- ▶ May not use public funds to advocate for or against ballot measure (*Stanson v. Mott*)
- ▶ Government Code §54964 – cities may provide information about the effects of a ballot measure
 - ▶ If fair, accurate and relevant
 - ▶ Consider outside counsel

Special Election?

- ▶ Elections Code § 9214: Regular Election
 - ▶ Signed by 10% of city's registered voters
- ▶ Elections Code § 9215: Special Election
 - ▶ Signed by 15% of city's registered voters

Special Election?

- ▶ Developer may offer to pay for the extra costs associated with holding a special election
- ▶ Be mindful of the Brown Act – see *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194 (invalidating election after finding that the Town violated the Brown Act when it failed to provide notice of the developer's proposed MOU offering to pay the costs of a special election)

Referendum

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- ▶ Through statutory referendum remedies
“voters have the final say.”

Tuolumne Jobs, 59 Cal. 4th at 1043 (citing
Elec. Code §§ 9235, 9237, 9241)

Referendum

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- ▶ “[A] request to withdraw a signature from a recall petition is effective, without regard to whether the voter signs the petition before or after signing the request, as long as the request is filed...prior to the filing of the petition.”

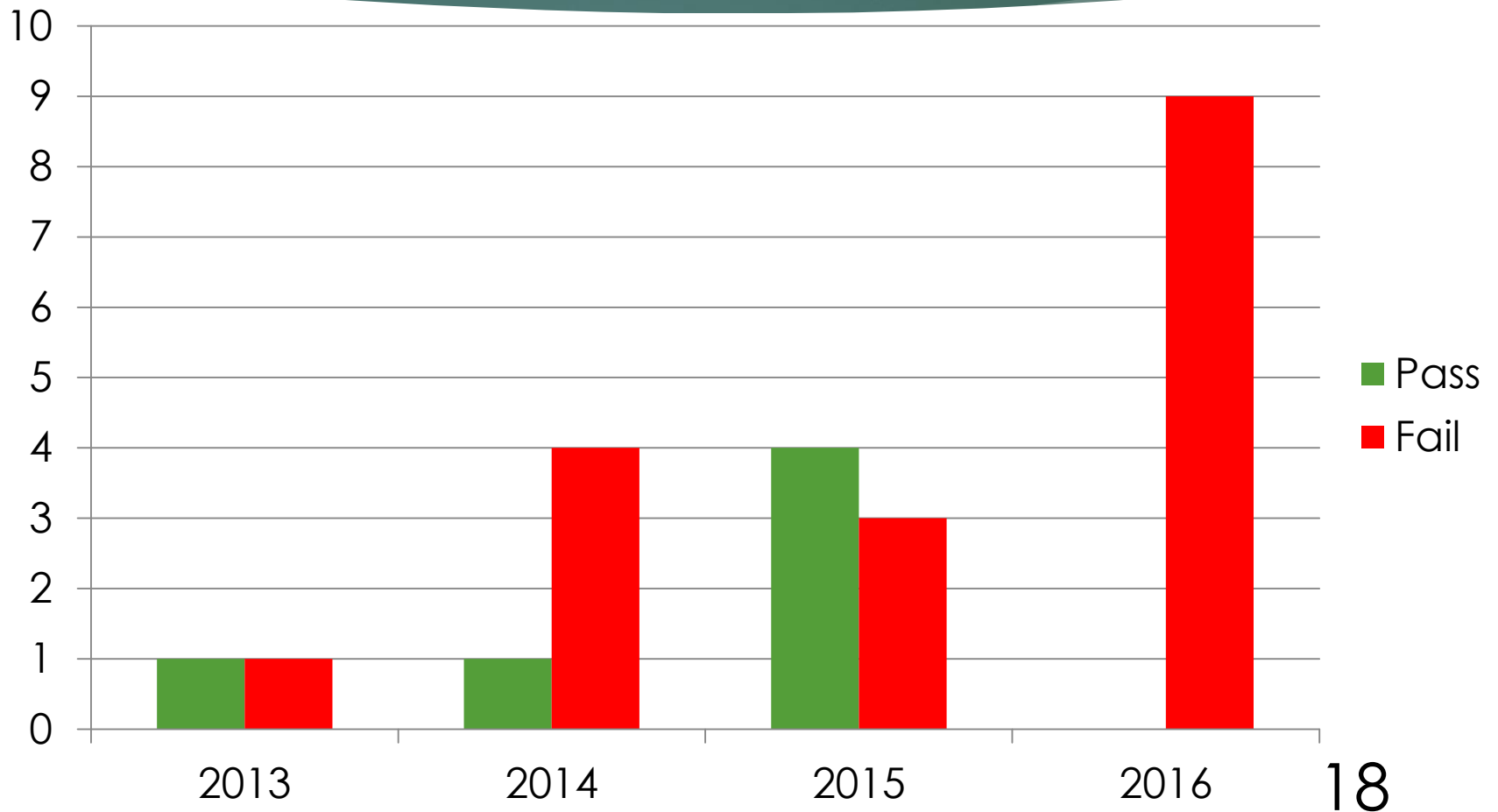
Carson Citizens for Reform v. Kawagoe, 178 Cal.App.4th 357, 361 (2009)

Substantive Validity

- ▶ Is initiative legislative (as opposed to administrative)?
- ▶ Does it name a private corporation? See *Hernandez v. Town of Apple Valley* (2017) 7 Cal.App.5th 194
- ▶ Does it attempt to legislate in an area exclusively delegated to the city council?

Development Initiatives

Election Results 2013-2016



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