



PASADENA

GENERAL MUNICIPAL LITIGATION UPDATE

League of California Cities
2018 City Attorneys' Spring Conference

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General Themes

General Municipal Litigation Update – May 2018

- 9-6-1 in favor of positions favoring public entities
 - > Land Use 3-2
 - > Civil Rights and Torts 4-0
 - > Pensions 0-1
 - > Propositions 218/26 0-0-1
 - > Contracts 0-2
 - > Elections 1-1
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Land Use

General Municipal Litigation Update – May 2018

- ***Weiss v. People ex rel. Dept. of Transportation*** – inverse condemnation
- ***City of Vallejo v. NCORP4, Inc.*** – marijuana
- ***UCMS v. City of Pasadena*** – marijuana
- ***Teixeira v. County of Alameda*** – Second Amendment
- ***Epona, LLC v. County of Ventura*** – First Amendment



Weiss v. People ex rel. Dept. of Transportation
20 Cal.App.5th (2018)

General Municipal Litigation Update – May 2018

- **2001** – CCP Section 1260.040 adopted
 - Disputes over issues affecting compensation in eminent domain matters can be brought by motion
- **2002** – Summary judgment statute amended to require 75 days' notice of MSJ, in lieu of (prior) 28 days' notice
- **2007** – *Dina v. People ex rel. Dept. of Transportation* – CCP Section 1260.040 applies to inverse condemnation matters, as well (court rejected argument that pretrial disposition of claims are limited to MSJ)



Weiss v. People ex rel. Dept. of Transportation (cont.)

General Municipal Litigation Update – May 2018

- Plaintiffs filed inverse condemnation action, alleging noise/viewshed concerns relating to freeway wall
- CalTrans/OCTA filed “legal issues” motion under *Dina*
- Trial court granted CalTrans/OCTA’s motion





Weiss v. People ex rel. Dept. of Transportation (cont.)

General Municipal Litigation Update – May 2018

- Court of Appeal reversed, finding “legal issues” motion inapplicable for
 - > A liability issue
 - > In an inverse condemnation case
- Liability issues in inverse condemnation cases

<i>Dina</i> (Second Dist., 2007)	<i>Weiss</i> (Fourth Dist., 2018)
CCP 1260.040 – 16 court days’ notice	MSJ – 75 calendar days’ notice



City of Vallejo v. NCORP4, Inc.

15 Cal.App.5th 1078 (2017)

General Municipal Litigation Update – May 2018



- **2011** – voters pass marijuana tax
- **2015** – City establishes “limited civil immunity”
- City sued Plaintiffs for illegally operating a marijuana dispensary
- Trial court denied preliminary injunction



City of Vallejo v. NCORP4 (cont.)

General Municipal Litigation Update – May 2018

- Court of Appeal reversed, finding cities may lawfully prohibit marijuana dispensaries that have a history of unpaid taxes
- Constitutional prohibition on *ex post facto* laws inapplicable here
 - > Only applies to criminal statutes punishing conduct prior to enactment
 - > Failure to pay taxes under 2011 measure is misdemeanor – even if late payment is made

- City employs a permissive zoning code, which
 - > Allows only those uses authorized; and
 - > Prohibits all other uses
- Zoning Code
 - > Does not authorize medical marijuana dispensaries
 - > Provides that non-permitted uses are nuisances



UCMS v. City of Pasadena (cont.)

General Municipal Litigation Update – May 2018

- City filed suit against several dispensaries
- Dispensaries argued the zoning code did not sufficiently state that dispensaries are a nuisance
- Trial court granted city's motion for preliminary injunction



UCMS v. City of Pasadena (cont.)

General Municipal Litigation Update – May 2018

- Court of Appeal affirmed, finding city's permissive zoning structure sufficient to establish nuisance *per se*



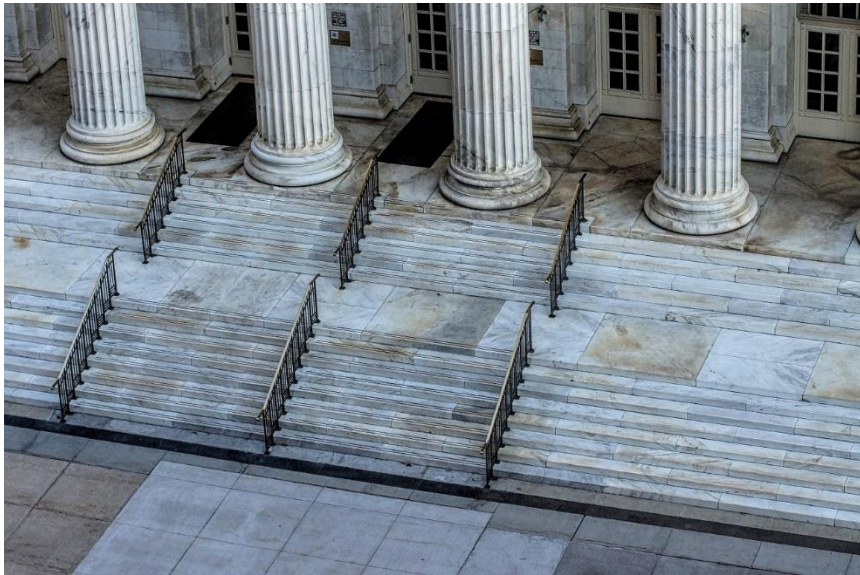


- Plaintiffs applied for permit to operate a gun store, which Board of Supervisors ultimately denied
- Plaintiffs filed suit, alleging County unlawfully prevented
 - > Potential customers from buying guns
 - > Plaintiffs from selling firearms



Teixeira v. County of Alameda (cont.)

General Municipal Litigation Update – May 2018



- District Court granted County's Motion to Dismiss
- Three-judge panel of Ninth Circuit reversed, in relevant part
- Ninth Circuit granted *en banc* review



Teixeira v. County of Alameda (cont.)

General Municipal Litigation Update – May 2018

- *En banc* panel affirmed District Court's dismissal of complaint
- Gun buyers do not have a right to have a gun store in a particular location, so long as access to firearms is not "meaningfully constrained"
- Act of selling firearms is not part of the Second Amendment's right to "keep and bear arms"
 - > Commercial proprietors do not have a "freestanding right" to sell firearms



Epona, LLC v. County of Ventura 876 F.3d 1214 (9th Cir. 2017)

General Municipal Litigation Update – May 2018

- County required CUP for temporary outdoor events in agriculturally-zoned property
 - > CUP “shall” be issued if standards satisfied
- Plaintiff wished to rent out part of his 40-acre property for wedding ceremonies
- County denied CUP





Epona, LLC v. County of Ventura (cont.)

General Municipal Litigation Update – May 2018

- District Court granted County's Motion to Dismiss
- Ninth Circuit reversed, finding County ordinance violates First Amendment in two areas
 - > Giving permitting officials insufficient guidance
 - > No time limitation to decide a CUP application



Civil Rights and Torts

General Municipal Litigation Update – May 2018

- ***District of Columbia v. Wesby*** – false arrest/qualified immunity
- ***Kisela v. Hughes*** – police use of force/qualified immunity
- ***Thompson v. Rohr*** – police use of force
- ***Rodriguez v. Dept. of Transportation*** – design immunity



District of Columbia v. Wesby

___ U.S. ___, 138 S.Ct. 577 (2018)

General Municipal Litigation Update – May 2018

- Officers had probable cause to arrest 21 individuals at party at what appeared to be a vacant house
- Even if probable cause were lacking, officers entitled to qualified immunity





Kisela v. Hughes

___ U.S. ___, 138 S.Ct. 1148 (2018) (*per curiam*)

General Municipal Litigation Update – May 2018

- Officer entitled to qualified immunity where
 - > Suspect was armed with a large knife
 - > Suspect was within striking distance of roommate
 - > Suspect ignored officers' orders to drop the knife
 - > Incident lasted less than one minute





- Deputy sheriff entitled to qualified immunity
 - > Felony arrest / nighttime traffic stop
 - > Plaintiff not handcuffed, but was complying
 - > Deputy sheriff pointed gun and threatened to kill Plaintiff
- Facts are on the “outer limit” of qualified immunity



Rodriguez v. Dept. of Transportation

21 Cal.App.5th 947 (2018)

General Municipal Litigation Update – May 2018

- Vehicle that plaintiff was passenger in veered off shoulder of state highway
 - > Struck guard rail
 - > Went over irrigation ditch
 - > Caught fire with occupants inside
- Plaintiff filed suit, alleging roadway did not have warning features, such as rumble strips





Rodriguez v. Dept. of Transportation (cont.)

General Municipal Litigation Update – May 2018

- Trial court granted Motion for Summary Judgment by Caltrans on design immunity grounds
- Court of Appeal affirmed grant of MSJ on design immunity





Rodriguez v. Dept. of Transportation (cont.)

General Municipal Litigation Update – May 2018

Causation	Not disputed by Plaintiff
Discretionary approval	Plans were approved by engineer with discretionary authority – and included a paved highway without rumble strips; Caltrans' failure to consider rumble strips is irrelevant, and agency's wisdom is only reviewed under third element (reasonableness)
Reasonableness of approval of plan/design	Not disputed by Plaintiff



Pensions

General Municipal Litigation Update – May 2018



***Alameda County
Deputy Sheriff's
Assn. v. Alameda
County Employees'
Retirement Assn. –
Public Employees'
Pension Reform Act
of 2013***



- PEPRRA modified the calculation of “compensation earnable”
- Court of Appeal remanded for additional fact finding by trial court





ACDSA v. ACERA (cont.)

General Municipal Litigation Update – May 2018

- Pending pension cases in California Supreme Court
- *Marin Assn. of Public Employees v. Marin County Employees' Retirement Assn.*, 2 Cal.App.5th 674 (2016) (rev. granted 11/22/16)
 - > Agencies may make “reasonable” modifications and changes to pensions
 - > Employees do not have a right to any fixed or definite benefits – just a right to a “substantial or reasonable pension”



ACDSA v. ACERA (cont.)

General Municipal Litigation Update – May 2018

- *Cal Fire Local 2881 v. CalPERS*, 7 Cal.App.5th 115 (2016) (rev. granted 4/12/17)
 - > PEPRAs doing away with the option to purchase nonqualifying service credit (airtime) did not impair a vested pension benefit





ACDSA v. ACERA (cont.)

General Municipal Litigation Update – May 2018

- *ACDSA v. ACERA*, 19 Cal.App.5th 61 (2018) (rev. granted 3/28/18)
 - > Declined to follow *Marin*'s more generalized approach
 - > If agency wishes to impair pension benefits, need to show “compelling evidence establishing” that the impairment bears a “material relation” to the theory of a pension system, and its successful operation
 - > Generally, rising pension costs alone are insufficient to impair pension benefits



Propositions 218/26

General Municipal Litigation Update – May 2018

- ***City of San Buenaventura v. United Water Conservation District – groundwater pumping charges***





- Groundwater pumping charges
 - > Not property-related charges
 - > Not subject to Proposition 218





Contracts

General Municipal Litigation Update – May 2018



- ***San Diegans for Open Government v. Public Facilities Financing Authority of the City of San Diego*** – Government Code Section 1090
- ***West Coast Air Conditioning Co., Inc. v. California Department of Corrections and Rehabilitation*** – Promissory Estoppel



SDFOG v. Public Fac. Financing Auth. of the City of San Diego
16 Cal.App.5th 1273 (2017) (rev. granted, 1/24/18)

General Municipal Litigation Update – May 2018

- City sought to refund/refinance bonds related to construction of Petco Park baseball stadium
- Plaintiff sued, alleging one or more financing team members had a financial interest in the bonds in violation of Government Code Section 1090
- Trial court found Plaintiff lacked standing
 - > Plaintiff not a party to the bond transaction



SDFOG v. PFFA of the City of San Diego (cont.)

General Municipal Litigation Update – May 2018

- Court of Appeal reversed, finding SDFOG's interest as taxpayer was sufficient to support standing
 - > Civil enforcement of Section 1090 was “never intended to be left in all cases to the parties to a government contract”
 - > But – court noted recent cases have reached “somewhat conflicting conclusions” in the area of standing to bring a Section 1090 action



West Coast Air Conditioning Co., Inc. v. CDCR

21 Cal.App.5th 453 (2018)

General Municipal Litigation Update – May 2018



- CDCR sought to renovate Ironwood State Prison
 - > Hensel Phelps
 - \$88 million
 - > Plaintiff
 - \$98 million
 - > Engineer's estimate
 - \$103 million



West Coast Air Conditioning Co., Inc. v. CDCR (cont.)

General Municipal Litigation Update – May 2018

- CDCR awarded to HP
- Plaintiff filed suit
 - > Alleged HP's bid had many defects, including math errors, that materially affected the bid price
- Trial court
 - > Set aside CDCR's award to HP
 - > Awarded Plaintiff \$250,000 for bid preparation costs against CDCR under promissory estoppel theory



West Coast Air Conditioning Co., Inc. v. CDCR (cont.)

General Municipal Litigation Update – May 2018

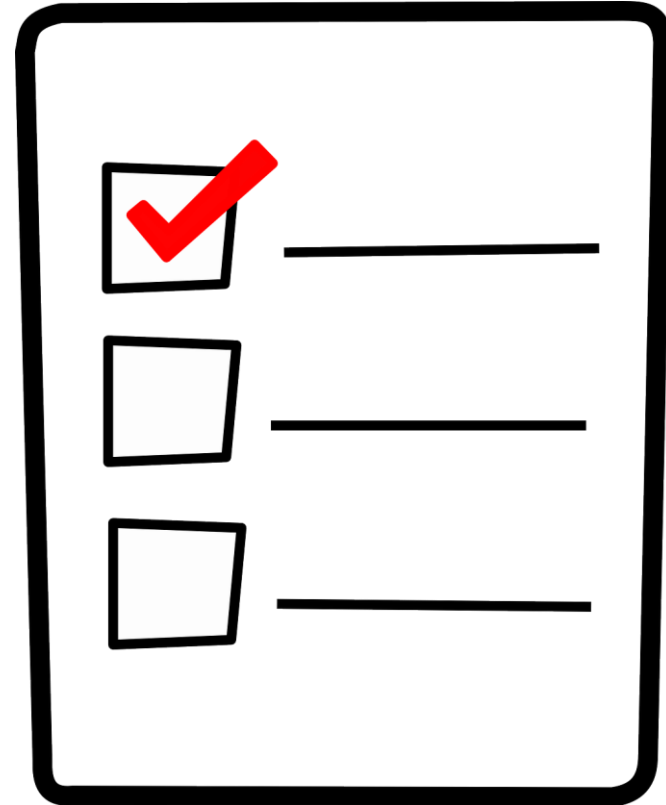
- Court of Appeal affirmed
 - > Bidder deprived of public contract due to “misaward” has neither tort nor contract action
 - Must rely on promissory estoppel
 - > If award of contract to HP set aside, court should either award Plaintiff
 - The contract; or
 - Damages equal to HP’s bid preparation costs



Elections

General Municipal Litigation Update – May 2018

- ***San Bruno Committee for Economic Justice v. City of San Bruno*** – referendum
- ***Save Lafayette v. City of Lafayette*** – referendum





San Bruno Cmte. for Econ. Justice v. City of San Bruno

15 Cal.App.5th 524 (2017)

General Municipal Litigation Update – May 2018

- Power of referendum only applies to legislative acts
- Resolution is administrative act, and not subject to referendum, where it
 - > Authorized sale of property
 - > Implemented prior legislative decisions





Save Lafayette v. City of Lafayette 20 Cal.App.5th 657 (2018)

General Municipal Litigation Update – May 2018

- Voters can validly exercise the power of referendum to reject zoning ordinance, even if successful referendum would make parcel's zoning designation inconsistent with previously-approved general plan amendments
- Court of Appeal followed *City of Morgan Hill v. Bushey*, 12 Cal.App.5th 34 (2017) (rev. granted 8/13/17)



Public Records

General Municipal Litigation Update – May 2018



- ***Labor & Workforce Development Agency v. Superior Court*** – deliberative process privilege



- Deliberative process privilege exempts from disclosure
 - > Index of responsive documents
- Work product doctrine exempts from disclosure
 - > Certain materials confidentially provided by Legislative Counsel to client state agency

Thank
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