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General Municipal Litigation Update

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GENERAL MUNICIPAL LITIGATION UPDATE

2026 ANNUAL CONFERENCE
LEAGUE OF CALIFORNIA CITIES

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RWG LAW

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RWG LAW

General Municipal Litigation Update

I. *3PAK LLC v. City of Seattle* (2026) 174 F.4th 1180

Holding: City of Seattle's choice to withdraw its law enforcement presence at the site of a sixteen-block, weeks-long, occupation-style protest did not amount to either a per se physical taking or a right-of-access taking under the Fifth Amendment. Additionally, the business and property owners who alleged purely economic harm from the City's decision to withdraw police protection did not have a claim under the state-created danger doctrine because that doctrine protects only against dangers to life or liberty and does not extend to purely economic loss.

Facts / Background: In June 2020, following the murder of George Floyd, protestors occupied a sixteen-block area of Seattle's Capitol Hill neighborhood, forming the Capitol Hill Occupied Protest (CHOP). The Seattle Police Department abandoned its nearby East Precinct and dramatically reduced policing of the area until CHOP was forcibly disbanded in July 2020, though protests and encampments continued in the general area until as late as December 2020.

3PAK LLC and Hugo Properties, LLC, two businesses located across from Cal Anderson Park at the center of CHOP, alleged that for six months they endured vandalism, trespass, theft, unsanitary conditions, road blockades, and near-nightly gunfire (including two deaths) while the City declined to intervene, and that the City affirmatively supported the occupation through public statements and by providing barriers, sanitation facilities, lighting, and other material resources to protestors. Their claimed losses were economic: broken leases, rent concessions, property damages, and deterred customers and prospective tenants.

The two businesses, which had been absent putative class members in an earlier class action raising similar claims, filed their own suits after class certification was denied in that case. They asserted claims under 42 U.S.C. § 1983 for violation of substantive due process, invoking the state-created danger doctrine, and for violation of the Takings Clause on both per se and right-of-access theories, along with a state-law nuisance claim. The district court dismissed the constitutional claims for failure to state a claim and dismissed the nuisance claim as barred by Washington's two-year statute of limitations. The businesses appealed.

Analysis: First, the Ninth Circuit noted that the state-created danger doctrine, which permits recovery for a state actor's role in creating or exposing a person to danger that they otherwise would not have faced, has been applied by the Ninth Circuit and other circuits exclusively to dangers implicating life or liberty (e.g., death, serious injury, sexual abuse). Courts have never applied the doctrine to solely economic or property harm. Because the businesses alleged only lost profits, revenue, and property damage, they failed to state a due process claim under the state-created danger doctrine, and the Ninth Circuit declined to expand the doctrine to a new category of harm.

On the Takings Clause claims, the Ninth Circuit held that a per se taking requires an affirmative government invasion or physical appropriation of the claimant's own property, which the businesses did not allege; mere proximity to a government-sponsored occupation does not suffice. The City's material support for protestors occupying nearby streets and sidewalks, without more, was insufficient, and unlawful acts of vandalism or trespass by third parties were not attributed to any intentional act of the City. Nor could a policy of government inaction be construed as the government physically taking property for itself or for others. The right-of-access takings claim also failed. Such a claim requires an interest protected by state law, and the businesses cited no authority that a temporary restriction to access is compensable under Washington law.

Impact: Through this decision, the Ninth Circuit confirmed for the first time that the state-created danger doctrine is confined to bodily and liberty interests and cannot be used to recover purely economic losses stemming from a municipality's withdrawal of police protection, foreclosing a novel theory of municipal liability for harms arising from tolerated civil unrest. The ruling also narrows the availability of Takings Clause claims arising from a decision not to police or actively clear an area during prolonged protests, requiring plaintiffs to show either an affirmative physical appropriation or a legally cognizable, non-temporary restriction on access.

II. *County of Del Norte v. Britt,* 121 Cal.App.5th 36 (2026)

Holding: A prevailing respondent in a receivership proceeding may recover attorney fees and costs even when the petitioner is a public entity. Health and Safety Code Section 17980.7(c)(11), which awards fees to the prevailing party, creates an exception to Health and Safety Code Section 17984, which generally prohibits imposing costs against a public entity.

Facts and Background: Robert Kurtz died intestate in 2020 owning residential property in Del Norte County. After his death, the property fell into severe disrepair and became occupied by squatters, resulting in nuisance conditions such as debris, overgrown vegetation, and drug activity. After attempting administrative enforcement efforts, the

County filed a petition under Health and Safety Code Section 17980.7(c) seeking appointment of a receiver to rehabilitate and sell the property.

The County named as respondents the "Estate of Robert D. Kurtz" and Kurtz's two sisters, Darla Britt and Sheryl Allsop, despite the sisters having informed the County they had no interest in rehabilitating or acquiring the property. The petition did not allege that either sister owned any legal interest in the property.

The trial court appointed a receiver, who rehabilitated and sold the property. The proceeds from the property sale were approximately $38,700 short of the receivership expenses. The receiver sought an order making the sisters jointly liable for the remaining costs plus the County's attorney fees under Health and Safety Code Section 17980.7(c)(15).

The sisters retained counsel and opposed the request, arguing that they were neither owners nor successors in interest because Kurtz's estate had never been probated and they had inherited no ownership interest in the property. The trial court agreed, finding that the County should never have named the sisters as parties and the court refused to impose liability upon them.

The sisters thereafter moved to recover attorney fees and costs under Health and Safety Code Section 17980.7(c)(11), which provides that "[t]he prevailing party in an action pursuant to this section shall be entitled to reasonable attorney's fees and court costs." The trial court denied the motion, reasoning that Health and Safety Code Section 17984 bars awards of costs against public entities enforcing State Housing Law and finding that the County, not the sisters, was the prevailing party because it successfully obtained appointment of the receiver. The sisters appealed.

Analysis: The Court of Appeal first addressed the apparent conflict between two provisions of the State Housing Law. Section 17980.7(c)(11) broadly provides that the prevailing party in a receivership proceeding is entitled to reasonable attorney fees and costs. By contrast, Section 17984 generally provides that neither an enforcement agency nor the city or county on whose behalf it acts is liable for costs in enforcement proceedings brought under the article.

Applying established principles of statutory construction, the court concluded that Section 17980.7(c)(11) controls. When statutes cannot be harmonized, courts construe the more specific statute as an exception to the more general one. The court observed that Section 17980.7(c)(11) applies only to proceedings under Section 17980.7, whereas Section 17984 broadly governs all enforcement proceedings under State Housing Law. Additionally, Section 17980.7(c)(11) was enacted almost three decades after section 17984. Because it is both more specific and more recent, Section 17980.7(c)(11) creates a limited exception permitting prevailing parties to recover fees against public entities in receivership proceedings.

The court also examined the legislative history of the 1990 amendments creating the receivership provisions. That history demonstrated that the Legislature intended the prevailing party attorney fee provision to apply broadly to proceedings under Section 17980.7 and did not indicate any intent to preserve governmental immunity from fee awards in receivership actions. The court rejected the County's argument that the fee provision was intended only to govern disputes between private parties.

The court distinguished *City and County of San Francisco v. Ballard* 136 Cal.App.4th 381 (2006), explaining that *Ballard* involved no receivership proceeding and therefore never required resolution of the conflict between Sections 17980.7(c)(11) and 17984. Any discussion in *Ballard* regarding the interaction of those statutes was therefore dicta and did not control.

The court then considered whether the sisters qualified as prevailing parties. Although the County successfully obtained appointment of a receiver and ultimately achieved its primary objective of rehabilitating the property, the court emphasized that prevailing party status must be evaluated from a practical perspective by examining each party's litigation objectives.

The sisters entered the litigation only after the receiver sought to impose personal liability upon them for the unpaid receivership expenses. Their sole objective was to avoid liability by establishing that they had no ownership interest in the property and therefore should never have been named in the proceeding. They obtained success on that issue.

The court found persuasive the reasoning in *Burkhalter Kessler Clement & George LLP v. Hamilton* 19 Cal.App.5th 3 (2018) , where multiple parties in the same lawsuit were each deemed prevailing parties on separate claims. Similarly, while the County prevailed on its nuisance abatement claim, the sisters prevailed on the County's attempt to extend liability to them personally. Accordingly, both could qualify as prevailing parties for different aspects of the litigation.

Impact: The decision clarifies that prevailing respondents in Health and Safety Code Section 17980.7 receivership proceedings may recover attorney fees against public entities despite the general immunity from costs provided by Section 17984. The opinion establishes that Section 17980.7(c)(11) creates a statutory exception for receivership actions and confirms that courts should determine prevailing party status by examining each litigant's practical litigation objectives rather than identifying a single prevailing party for the proceeding as a whole. The decision also provides important protection for individuals who are improperly named in nuisance abatement receivership actions solely because of their familial relationship to a deceased property owner.

III. *Del Biaggio v. Bansen,* 121 Cal.App.5th 831 (2026)

Holding: An attorney may be subject to: (1) a reduction in attorney fees awarded pursuant to a court ruling if the attorney incurred fees for claims that were unwarranted under law or unsupported by evidence; and (2) sanctions for misrepresenting case law by utilizing fictional quotations created by Artificial Intelligence ("AI") in court documents and relying on paralegals to verify its accuracy.

Facts/Background: Mr. Floyd, an attorney representing Mr. Del Biaggio, a dairy worker, brought an action against the Bansens for breach of contract, unjust enrichment, and conversion, claiming they failed to transfer livestock and pay money owed under a dairy succession plan. After a jury trial, the court awarded damages and attorney fees to the dairy worker, but reduced attorney hours and excluded paralegal fees. Mr. Del Biaggio then moved for reconsideration of the court's order denying the recovery of paralegal fees, contending that numerous cases have held that paralegal fees are recoverable as attorney fees.

However, Bannens' attorneys opposed the motion, arguing it was procedurally improper as it inappropriately cited AI-generated case law quotations, and requested sanctions under Code of Civil Procedure Section 128.5. The trial court denied the motion for reconsideration on the grounds that no new law or facts were presented. However, the court ordered Mr. Del Biaggio to pay Bannens' attorneys $2,250 in fees, representing the five hours of attorney time that Bannens' attorneys spent opposing the motion.

Analysis: The Court of Appeal affirmed the trial court's reduction of attorney hours but reversed its ruling that paralegal fees were not within the scope of the contract and vacated the sanctions imposed in connection with the motion for reconsideration. However, the Court of Appeal ordered Mr. Floyd to pay sanctions to the trial court for filing court documents that included generated Artificial Intelligence ("AI") that misrepresented case law.

Regarding the trial court's first ruling, the Court of Appeal held that the court did not abuse its discretion by reducing compensable attorney hours from 283.1 to 140, resulting in an award of $56,000 in attorney fees. The court's reasoning referenced Civil Code Section 1717, which gives trial judges the authority to assess whether attorney fees awarded are reasonable. Additionally, the court concluded the requested $400 hourly rate was a reasonable rate based on the attorney's experience comparable with hourly rates charged by other attorneys in the same county.

The Court of Appeal also agreed with the trial court that the number of hours expended by the attorney was unreasonable. While the court characterized the legal dispute as a "fairly straightforward breach of contract case," it noted that counsel complicated the case by asserting multiple causes of action that were either unwarranted under the law or unsupported by evidence. Additionally, many of the attorney's time sheet entries were block billed, and the court was unable to determine how much time was spent on these unreasonable endeavors. As a result, the Court of Appeal found no abuse of discretion in the trial court's decision and found the reduction of attorney hours reasonable.

However, the Court of Appeal did conclude that the trial court erred insofar as it held that the agreement at issue did not authorize the recovery of paralegal fees. In its reasoning, the Court highlighted that the agreement at issue included a fee-shifting provision that allowed for the recovery of attorney fees if a party prevailed in litigation matters. Although the phrase "attorney fees" was not defined, the Court noted that published case law expressly addressing whether paralegal fees are recoverable as attorney fees has uniformly answered the question affirmatively. The Court emphasized that although paralegal fees are allowable as part of attorney-recovery fees, the trial court, on remand, should evaluate whether and to what extent the paralegal's hours and rate were reasonable.

Regarding the sanctions paid by Mr. Del Biaggio, the Court of Appeal concluded that the trial court's characterization of Mr. Del Biaggio's motion for reconsideration as "frivolous" was a significant overreach. The Court observed that Civil Code Section 128.5 permits sanctions against parties and their attorneys if attorneys submit court papers in bad faith, frivolously, or improperly. The Court emphasized that Mr. Del Biaggio's motion for reconsideration in the trial court was procedurally proper because the court decided sua sponte that paralegal fees could not be recovered under the Agreement. Furthermore, although the motion contained fictitious AI-generated quotations, the Court of Appeal considered his arguments in the trial court otherwise meritorious.

Nevertheless, the Court of Appeal instructed Mr. Floyd to pay sanctions to the trial court for conduct that unnecessarily burdens the court and taxpayers. The Court of Appeal acknowledged that Mr. Floyd admitted to the unverified use of AI, and failed to prevent the errors and to satisfy his obligation to personally review the legal authorities. The Court noted that Mr. Floyd failed to comply with California State Bar guidance, which states that "a lawyer must review all outputs from AI tools for accuracy, including analysis and citations, before court submission," when he indicated that he intended for his paralegal to "simply check the citations before filing the brief." Secondly, although the Court accepted Mr. Floyd's representation that there was no intent to mislead, the Court found his declarations vague about how the "communication error" arose. Mr. Floyd emphasizes that, because he was in trial, he had "limited time for review." Yet his general unavailability to supervise the brief's finalization made it even less appropriate for Mr. Floyd to expect his paralegal to verify the written statements about cases he had not personally reviewed. Lastly, in failing to rectify his motion, Mr. Floyd failed his duty of candor that requires counsel to "correct any errors or misleading statements made to the court, regardless of whether such outputs were generated with or without real-time human direction." Mr. Floyd filed a letter withdrawing the misstatements just days before oral arguments, and more than three months after realizing only from the Bansens' sanctions motion that the opening brief lacked proper verification of quotations and citations.

Impact: Attorneys should be advised that attorney fees pursuant to a court ruling may be reduced if the attorney incurred fees for claims that were unwarranted under the law or unsupported by evidence. Additionally, attorneys are required to strictly follow California State Bar Guidance regarding the use of Artificial Intelligence ("AI"), and any violations of such guidance can result in sanctions.

IV. *Dummer v. City and County of San Francisco,* 120 Cal.App.5th 1009 (2026)

Holding: A public agency does not have a ministerial duty to immediately apply for an amended water supply permit or open a drinking water reservoir to public fishing after determining that fishing may be feasible. Because the Health and Safety Code, implementing regulations, and CEQA require the agency to exercise discretion in developing a fishing program, conducting environmental review, and proposing permit conditions before seeking approval from the State Water Resources Control Board ("SWRCB"), mandamus will not lie to compel immediate action.

Facts and Background: Tim Dummer, a licensed California fisherman, sought public fishing access to the Calaveras Reservoir, a drinking water reservoir owned by the City and County of San Francisco and managed by the San Francisco Public Utilities Commission. The reservoir provides drinking water to 2.7 million residents in the Bay Area and is governed by the Alameda Watershed Management Plan, which prohibited public access and fishing.

In an earlier 2019 action ("*Dummer I*"), Dummer successfully obtained a writ of mandate to compel San Francisco to determine that public fishing would not affect the purity and safety of the reservoir's drinking water under Health and Safety Code Section 117045. The trial court held that while San Francisco had a ministerial duty to make that determination, it had no other ministerial duties at that time. San Francisco subsequently adopted a resolution concluding that shoreline fishing could occur without compromising water quality, subject to CEQA review, SWRCB review, and development of appropriate terms and conditions for a fishing program.

Following the resolution, San Francisco began planning for a fishing program and identified various infrastructure improvements needed to ensure the safety of the public and staff, and to protect the watershed and drinking water quality. These included road improvements, parking, restrooms, security fencing and signage. Upon learning that the reservoir would not open immediately for fishing, Dummer filed a second petition for writ of mandate. The trial court denied the petition, finding San Francisco had not failed to perform any ministerial duty and finding that the Fish and Game Code did not entitle Dummer to immediate fishing access. The trial court also ruled that San Francisco did not abuse its discretion in failing to apply for an amended water supply permit at that time, as it worked to address and resolve preconditions necessary to obtain the permit. Dummer appealed.

Analysis: The Court of Appeal began by reiterating the requirements for traditional mandamus. A writ of mandate requires the petitioner to establish a clear, present ministerial duty on the part of the respondent and a corresponding beneficial right to performance of that duty. Although mandamus may compel a public agency to exercise discretion as lawfully prescribed, it cannot compel the agency to exercise that discretion in a particular manner. A statutory command does not become ministerial simply because it uses mandatory language if significant discretion is necessary to perform the duty.

The court determined that three interacting statutes must be examined together to resolve the claim. Fish and Game Code Section 5943, which grants the public a qualified right to fish in reservoirs; the Health and Safety Code provisions governing recreational use of water supply reservoirs; and CEQA. Health and Safety Code Section 117045 requires a reservoir owner to obtain a water supply permit after determining fishing will not impair drinking water quality; however, neither the statute nor its implementing regulations establishes a deadline requiring immediate submission of a permit application. Instead, the statutory and regulatory framework contemplates that the reservoir owner will first exercise judgment in developing a proposed fishing program and assembling the detailed information necessary for SWRCB's review.

The court rejected Dummer's argument that only SWRCB possesses authority to determine the terms and conditions governing fishing access. Although SWRCB ultimately decides whether to approve a permit and what conditions it should contain, the Health and Safety Code and Title 17 regulations require the reservoir owner to propose the program, describe the facilities and operations necessary to manage recreational use, and provide any required environmental documentation. These requirements necessarily involve discretionary decision-making by the public agency before the application can be submitted.

The court also rejected Dummer's reliance on the Fish and Game Commission's statewide regulations authorizing year-round fishing at Calaveras Reservoir. The Commission's CEQA review addressed only statewide fishing regulations such as seasons, bag limits, and gear restrictions. It did not evaluate the site-specific environmental impacts associated with opening a previously closed drinking water reservoir or constructing the infrastructure needed to safely accommodate public access. The commission's regulations did not eliminate San Francisco's obligation to conduct its own environmental review or develop an appropriate fishing program.

Next, Dummer argued that he had a constitutionally guaranteed right to fish. The court concluded that neither article I, Section 25 of the California Constitution nor Fish and Game Code Section 5943 creates an absolute right to fish free from regulatory requirements. Relying heavily on *State of California v. San Luis Obispo Sportsman's Assn.* (1978) 22 Cal.3d 440, the court explained that the public's right to fish must be balanced against the State's inherent police power to protect public safety and welfare.

The court also rejected Dummer's argument that various immunity statutes governing recreational use of natural lands required immediate public access. Those statutes limit liability; they do not excuse compliance with permitting requirements or eliminate a public agency's discretion to determine the terms and conditions necessary to control fishing access at the reservoir. Similarly, San Francisco's actions did not violate Water Code Section 6026 because San Francisco was not attempting to regulate reservoirs generally, but rather was complying with statutes requiring submission of a complete permit application to SWRCB.

Finally, the court emphasized that substantial evidence supported the trial court's finding that San Francisco was actively moving forward with the required permitting process. San

Francisco was developing the fishing program, conducting CEQA review, amending its watershed management plan, and preparing the information required by the Health and Safety Code and implementing regulations. Because no statutory deadline required earlier action, mandamus relief was unavailable to control the manner in which San Francisco exercised its discretion. The court noted, however, that nothing in its decision prevented Dummer from seeking judicial relief if the San Francisco or SWRCB later acted unlawfully or arbitrarily during the permitting process.

Impact: The decision confirms that Health and Safety Code Section 117045 does not impose a ministerial duty requiring a public agency to immediately seek a water supply permit after determining that fishing may be feasible at a drinking water reservoir. Instead, reservoir owners retain discretion to develop fishing programs, conduct CEQA review, determine appropriate operational conditions, and prepare a complete permit application before submitting it to SWRCB. The opinion also reinforces that California's constitutional and statutory right to fish is qualified rather than absolute and must be harmonized with the State's interests in protecting drinking water, public safety, and the environment.

V. *Eagle Colton 55 LP v. City of Colton,* 121 Cal.App.5th 1143 (2026)

Holding: The trial court erred in denying the City of Colton's special motion to strike under the anti-SLAPP statute (Code of Civil Procedure § 425.16). Plaintiff asserted four causes of action: (1) intentional interference with prospective economic advantage; (2) negligent interference with prospective economic relations; (3) breach of the implied covenant of good faith and fair dealing; and (4) defamation. Each arose from Colton's protected activity: its analysis of a municipal loan and its communications with the neighboring city of Yucaipa concerning the financing and development of an affordable senior-housing project, a matter of public interest. The plaintiff, moreover, could not demonstrate the minimal merit required at the second step of the anti-SLAPP analysis, because it failed to comply with the claim-presentation requirement of the Government Claims Act (Government Code § 810 et seq.). The Court of Appeal reversed the order denying the motion and remanded with directions to grant it and to determine the attorney fees to which Colton is entitled.

Facts and Procedure: In 2012, the City of Colton and the plaintiff developer, Eagle, entered into an agreement for the development of an affordable senior-housing community, financed in part by a $2.5 million loan from Colton that was secured by a promissory note. The note required Eagle to make annual payments based on the project's residual receipts and to furnish annual financial statements reviewed by an independent certified public accountant, together with a written opinion that the statements fairly presented the project's financial position. Colton's own auditors repeatedly noted that Colton was not adequately monitoring Eagle's compliance with the note. In January 2019, Colton served a notice of breach for Eagle's failure to provide independent audited financial statements. Eagle disputed the requirement but cured the asserted breach by providing audited statements, which it has since furnished annually. Colton rescinded the notice of breach.

In late 2023, Eagle was in advanced negotiations with the neighboring city of Yucaipa to develop a similar project, following years of exclusive negotiation. After a Yucaipa official contacted Colton's finance director to inquire about Colton's receipts on the Eagle note, and after discussions between Yucaipa and Colton officials, Yucaipa allowed its exclusive-negotiation agreement with Eagle to expire.

In September 2024, Eagle filed suit against Colton, alleging that Colton's finance director made false statements to Yucaipa officials that caused the collapse of the Yucaipa project and, according to Eagle, at least $65 million in lost profits. Colton moved to strike the complaint, arguing both that the claims arose from protected activity and that Eagle could not prevail because its claims were barred by the Government Claims Act. The trial court found that the claims arose from protected activity, but concluded that Eagle had shown a likelihood of prevailing, and it denied the motion. Colton appealed, and the Court of Appeal reviewed the order de novo.

Analysis:

Timeliness: As a threshold matter, the Court of Appeal held that Colton's motion was timely. The motion was filed sixty days after the amended complaint was served. Additionally, a trial court has discretion under Code of Civil Procedure § 425.16, subdivision (f) to entertain an anti-SLAPP motion at a later time. Given that no discovery had been conducted, no deposition taken, and no trial date set, the trial court did not abuse its discretion in hearing the motion.

Protected Activity: The court held that each cause of action arose from protected activity. All four claims were based on Colton's analysis of its note with Eagle and its communications with Yucaipa concerning the financing and development of a senior-housing project. The commercial and residential development of a substantial parcel is a matter of public interest, and communications between officials of different public entities concerning municipal contract are made "in connection with an issue under consideration or review by a legislative body" within the meaning of Code of Civil Procedure § 425.16, subdivision (e). *Tuchscher Development Enterprises, Inc. v. San Diego Unified Port Dist.*, 106 Cal.App.4th 1219 (2003); *Rand Resources, LLC. v. City of Carson*, 6 Cal.5th 610 (2019). The statute's protections extend to governmental speakers and public officials addressing matters of public concern, and to communications preparatory to official action. *Vargas v. City of Salinas*, 46 Cal.4th 1 (2009).

Probability of Prevailing: The court held that Eagle could not establish the minimal merit required because it failed to comply with the Government Claims Act's claim-presentation requirement. Under Government Code Section 915, a claim must be delivered or mailed to the clerk, secretary, or auditor of the public entity, or to its governing body at its principal office, or actually received by one of the statutorily designated recipients. Eagle's delivery of a letter to a single city council member, alone, off-site, at a private meeting, where the member did not recognize the letter as a claim and did not forward it, did not constitute actual receipt by the "board," which the Act defines as the governing body. Relying on *DiCampli-Mintz v. County of Santa Clara*, 55 Cal.4th 983 (2012), the court explained that it could not expand the list of authorized recipients or shift to the public entity the claimant's burden of proper claims presentation. The court further observed that the letter, styled a "Confidential Settlement Communication," was not readily identifiable as a claim, and that Eagle had filed suit after only forty-one days without affording Colton the forty-five day response period the Act contemplates. *Schaefer Dixon Associates v. Santa Ana Watershed Project Authority*, 48 Cal.App.4th 524 (1996). Finally, the court held that Eagle's allegation, made on information and belief that the clerk had received the letter, was inadmissible and could not establish a probability of prevailing. *Evans v. Unkow*, 38 Cal.App.4th 1490 (1995).

Impact: There are three main implications for public entities.

First, a public entity sued in tort over its officials' communications may invoke Code of Civil Procedure § 425.16, because the statute protects governmental speakers addressing matters of public interest. Where a suit is based on a public official's statements about a municipal contract, loan, or development project, including unfavorable assessments shared with another agency, those statements are likely to constitute protected activity, and counsel should evaluate the availability of an anti-SLAPP motion at the outset of the litigation.

Second, a defendant who prevails on an anti-SLAPP motion is entitled to a mandatory award of attorney fees.

Third, the Government Claim Act's presentation requirement is applied strictly. Delivery of a communication framed as a settlement overture to an individual council member is not a claim.

VI. *Fix the City, Inc. v. City of Los Angeles,* 118 Cal.App.5th 957 (2026)

Holding: Los Angeles Administrative Code (LAAC) § 8.33, which authorizes the mayor to declare a "local housing and/or homelessness emergency" and to exercise a range of emergency powers upon that declaration, is a valid exercise of the City of Los Angeles's authority as a charter city over its own municipal affairs. The California Emergency Services Act (CESA; Government Code § 8550 et seq.) does not preempt LAAC § 8.33. The ordinance concerns a municipal affair, it does not actually conflict with CESA, and CESA neither expressly nor impliedly occupies the field of local emergency response. The more general local-emergency definition in LAAC § 8.22 likewise does not invalidate § 8.33. The Court of Appeal affirmed the trial court's order sustaining the City's demurrer without leave to amend. Because the absence of any actual conflict resolved the matter at the second step of the home-rule analysis, the court expressly declined to decide whether CESA's procedural requirements under Government Code § 8630 apply to charter cities.

Facts and Procedure: LAAC § 8.33 empowers the mayor of Los Angeles to declare a local housing and/or homelessness emergency when certain statutory metrics are met (e.g., housing supply projected to be at least 40 percent below the City's production goals or defined homelessness-crisis thresholds). Upon such a declaration, the mayor may, among other things, promulgate rules and directives to address the emergency, commandeer property to meet interim housing needs, requisition City personnel and materials, and suspend competitive-bidding restrictions otherwise imposed by the Charter and the administrative code.

On July 7, 2023, Mayor Bass declared an emergency under LAAC § 8.33. The City Council affirmed and renewed the declaration, and the mayor exercised the powers it conferred to address conditions affecting unhoused residents. The mayor lifted the declaration on November 4, 2025, while this appeal was pending. The appeal was not rendered moot, however, because LAAC § 8.33 remains part of the administrative code. Fix the City, Inc., a nonprofit organization, petitioned for writ and declaratory relief, contending that LAAC § 8.33 was invalid on two grounds: (1) it argued that CESA preempted the ordinance because a housing shortage and homelessness are not among the conditions that support a “local emergency” under Government Code § 8558, subdivision (c)(1), and because LAAC § 8.33 does not require the seven-day City Council ratification or the 60-day review that Government Code § 8630 imposes; and (2) it argued that LAAC § 8.33 was inconsistent with the general definition of “local emergency” in LAAC § 8.22. The trial court sustained the City’s demurrer without leave to amend and entered a judgement of dismissal. Fix the City appealed.

Analysis:

Home-Rule Framework: The court applied the four-part framework the California Supreme Court developed to determine whether a state law unconstitutionally infringes the home-rule authority that article XI, section 5, subdivision (a) of the California Constitution grants charter cities. Under that framework, the court asks (1) whether the local law regulates a municipal affair; (2) whether there is an actual conflict between the state law and the local law; (3) whether the state law addresses a matter of statewide concern; and (4) whether the state law is reasonably related to resolving that concern and is narrowly tailored to avoid unnecessary interference in local governance. As the court emphasized, if there is no actual conflict between the state statute and the local enactment, the analysis ends at the second step, and no choice between “municipal affair” and “statewide concern” is required, *California Fed. Savings & Loans Assn. v. City of Los Angeles*, 54 Cal.3d 1 (1991); *City of Huntington Beach v. Becerra*, 44 Cal.App.5th 243 (2020).

- *Municipal Affair:* LAAC § 8.33 concerns a municipal affair because it governs the City’s own response to conditions existing exclusively within its territory and confers powers on the City’s own executive to address those conditions. Thus, it falls within the City’s home-rule authority.

- *Absence of Actual Conflict:* The court held there was no actual conflict between LAAC § 8.33 and CESA. CESA authorizes political subdivisions to proclaim the type of emergency it describes but does not purport to bar

> them from declaring other kinds of emergencies. The two enactments address different circumstances and confer different powers. CESA is directed at conditions of disaster or extreme peril that are likely to exceed a subdivision's own resources and require the combined forces of other political subdivisions, and its principal benefits are mutual aid and statutory immunities. LAAC § 8.33, by contrast, is directed at a housing or homelessness emergency specific and limited to the City. It confers different powers (e.g, the authority to commandeer property and requisition City personnel) without accompanying immunity provisions.

Because no conflict existed, the court did not proceed to the third and fourth steps of the analysis.

Field Preemption: The court also rejected the contention that CESA preempts the field of local emergencies. Preemption exists where the Legislature has expressly manifested an intent to fully occupy the field or has impliedly done so under the indicia set out in Sherwin-Williams Co. v. City of Los Angeles, 4 Cal.4th 893 (1993). The Legislature manifested no such intent here. Government Code § 8668, subdivision (b) provides that nothing in CESA diminishes the authority granted to cities by article XI, section 7 of the Constitution, which independently empowers cities to enact local ordinances not in conflict with general law. CESA's definition of "local emergency" is not all-inclusive; it is focused on conditions that can spread among or overwhelm multiple subdivisions. A statutory scheme providing for coordination and mutual aid does not evince an intent to preclude local legislation addressing emergencies unique to a particular city.

LAAC § 8.33: The general local-emergency definition in LAAC § 8.22 does not invalidate LAAC § 8.33. The court reasoned that, because the City Council adopted LAAC § 8.33 after LAAC § 8.22, it either understood the conditions supporting a LAAC § 8.33 declaration to constitute an "occurrence" within the meaning of LAAC § 8.22, or intended to establish an additional category of emergency. Under either reading, the provisions do not conflict.

Impact: A charter city may legislate categories of local emergency beyond those described in CESA. Where an ordinance is directed at conditions within the city and addressed through the city's own resources, it concerns a municipal affair that CESA does not preempt.

VII. *City of Fresno v. Superior Court,* 119 Cal.App.5th 418 (2026)

Holding: The phrase "great bodily injury," in the California Public Records Act ("CPRA") provision—which states that records concerning incidents involving force by a peace officer resulting in great bodily injury are not confidential—should be construed consistently with Penal Code Section 12002.7, which defines "great bodily injury" as a "significant or substantial physical injury".

Facts/Background: Until recently, law enforcement investigatory records were categorically exempt from disclosure under CPRA. However, Government Code Section 832.7(b)(1) now contains an exception to this categorical exemption, making certain law enforcement investigatory records subject to disclosure if they relate to the report, investigation, or findings of "[a]n incident involving the use of force against a person by a peace officer or custodial officer that resulted in death or in great bodily injury."

On March 27, 2023, the American Civil Liberties Union of Southern California ("ACLU") submitted a CPRA request to the City of Fresno seeking public records regarding the City's Police Department's use of police K-9s. The request sought records concerning K-9 bites or injuries and K-9 incidents involving force leading to death, excessive force, failure to intervene, dishonesty, or discrimination.

City produced responsive records but also indicated it withheld use-of-force records that did not result in great bodily injury, which the City defined as serious bodily injury. Shortly after, ACLU sent correspondence to City alleging the City had improperly withheld and/or redacted records in response to ACLU's request. City responded, affirming that the redacted or withheld documents were properly exempt or not subject to disclosure because punctures, lacerations, and contusions caused by K-9s did not constitute a serious bodily injury, and therefore no exception to nondisclosure applied.

On April 22, 2024, the ACLU filed in the Fresno Superior Court a verified petition for writ of mandate and complaint for injunctive and declaratory relief, alleging the City had disregarded its legal obligations to disclose public records by withholding responsive records and redacting information from responsive records that were subject to disclosure.

ACLU requested the court issue (1) a peremptory writ of mandate directing the City to immediately disclose all nonexempt and requested public records, or parts thereof, in its possession; (2) an injunction requiring the City to produce all records subject to disclosure and to reproduce records without improper redactions; and (3) a declaration that City's conduct violates the CPRA. On May 19, 2025, the superior court issued a writ of mandate directing City to provide to the requester specified records in incidents where great bodily injury was inflicted. The City then filed a petition for writ of mandate.

Analysis: The meaning of the phrase "great bodily injury" is the central issue in this case. ACLU argued, and the superior court held, that the phrase "great bodily injury" as used in Penal Code Section 832.7 should be construed to have the same meaning as "great bodily injury" as defined in Penal Code Section 12022.7(f)(1): "a significant or substantial physical injury." The City, however, argued that "great bodily injury" as used in Penal Code Section 832.7 should be construed more narrowly and have the same meaning as "serious bodily injury" as defined in Government Code Section 12525.2(d)(4): "a bodily injury that involves a substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ."

Here, the Court of Appeal agreed with the superior court and denied the City's petition for writ of mandate, holding that the Legislature intended for the phrase "great bodily injury" in Section 832.7 to be construed consistently with Section 12022.7.

In reasoning, the Court of Appeal noted that the Legislature chose to use the phrase "great bodily injury," which has a well-established legal meaning set forth in Penal Code Section 12022.7(f)(1) and cases interpreting that provision when amending subdivision (b)(1)(A)(ii) of Penal Code Section 832.7 to render certain records subject to disclosure under the CPRA. It highlighted that because the Legislature deliberately chose to use a phrase with a familiar and well-established meaning, the Legislature's choice of words most accurately reflects its intent.

Additionally, the Court emphasized that the legislative history of Senate Bill 1421, which adopted Government Code Section 832.7(b)(1), reflects the Legislature's express rejection of the phrase "serious bodily injury," and does not reflect an intent to limit disclosure to only those incidents involving injuries encompassed by Government Code Section 12525.2(d)(4).

The Court rejected the City's argument that the definition of serious bodily injury in Government Code Section 12525.2 is more appropriate because, like the CPRA, that section is within the Government Code. In its reasoning, the Court noted that although this section is located within the Government Code, Section 12525.2 is not contained within the CPRA, does not relate to the disclosure of records to the public, and is set forth in an unrelated part of the code pertaining to law enforcement's reporting obligations. The Court also observed that sections 832.7 and 12022.7 are both located within the Penal Code, as evidence that the provisions are to be construed consistently.

Impact: When determining if law enforcement investigatory records are subject to disclosure pursuant to CPRA, public agencies should construe the phrase "great bodily injury" in Penal Code Section 832.7(b)(1) as "a significant or substantial physical injury" as defined in Penal Code Section 12022.7(f)(1).

VIII. *Gibbs v. County of Humboldt* (2026) 120 Cal.App.5th 565

Holding: The Court of Appeal held that a former public employee has two independent causes of action against their employer under Government Code section 815.6 when the employer failed to timely enroll the employee in CalPERS upon eligibility and, separately, when the employer failed to maintain the employee's personnel records or to permit the employee to inspect them.

Facts / Background: Kay Marie Gibbs worked as a court reporter for the Humboldt County Superior Court for nearly forty years. Although she became eligible for enrollment in CalPERS in December 1983, the County did not enroll her until November 1989. As she prepared to retire in 2019, Gibbs learned that she would not receive CalPERS service credit for her early, unenrolled years and that she needed the County to certify her full employment history to CalPERS in order to purchase "prior service credit."

Despite repeated requests and promises from County employees, the County was ultimately only able to produce an incomplete compilation of her pay-period records, leaving several periods of her employment history missing. Gibbs sued the County and three individual County human resources employees, alleging common law negligence and failure to discharge mandatory duties under Government Code section 815.6 for failing to maintain and produce her personnel records and for failing to timely enroll her in CalPERS. Gibbs claimed she was forced to delay her retirement and would lose hundreds of thousands of dollars in retirement benefits. The trial court sustained demurrers to all of these claims without leave to amend, and Gibbs appealed. The Court of Appeal held that Gibbs had stated viable causes of action.

Analysis: The court applied the three-part test for liability under Government Code section 815.6: a mandatory duty, an enactment designed to protect against the kind of risk suffered, and proximate causation. The court held that (1) Labor Code section 1198.5 and Government Code section 31011 impose a nondiscretionary duty on public employers to maintain personnel records for at least three years after termination and to allow employees to inspect them, (2) these statutes were designed to let employees guard against or correct errors affecting their rights and benefits, and (3) the County's failure to maintain and produce Gibbs's records could directly and proximately cause the kind of harm that Gibbs alleged - the inability to enforce her employee rights and benefits.

The court likewise held that the Public Employees' Retirement Law under Government Code sections 20281, 20283, and 20502, and 20028 imposes a mandatory, nondiscretionary duty on contracting public agencies to timely enroll eligible employees in CalPERS, reasoning that treating the obligation as discretionary, and therefore unenforceable, would render the statutes' benefit "illusory." This duty is designed to protect employees' pension rights, as well as the system's solvency, and the County's breach could directly cause the loss of retirement benefits that Gibbs alleged.

The Court of Appeal rejected the County's argument that its 2004 transition of court reporters from county employees to court employees because of the Trial Court Employment Protection and Governance Act (TCEPGA) extinguished its duty. Gibbs's employment was never terminated as she worked as a court reporter both before and after the Act, so the three-year retention period in Labor Code section 1198.5(c)(1) never began to run. The TCEPGA also expressly preserved the County's and trial court's joint CalPERS-related obligations.

Finally, the Court of Appeal rejected the County's contention that a writ of mandate was Gibbs's exclusive remedy, distinguishing cases involving challenges to CalPERS's own quasi-adjudicatory determinations.

Impact: The decision gives California public employees causes of action under Government Code section 815.6 when a public agency fails to maintain or provide access to personnel records under Labor Code section 1198.5, or when it fails to timely enroll an eligible employee in CalPERS under the Public Employees' Retirement Law. It clarifies that a public agency's records-retention and CalPERS-enrollment duties toward employees who worked before a subsequent change in employment structure (such as the TCEPGA's shift of trial court employees from county to court employment) are not automatically extinguished by that structural change so long as employment continues without a break.

IX. *Louisiana v. Callais* 146 S.Ct. 1131 (2026)

Holding: The State of Louisiana's congressional district map -- redrawn after courts found Louisiana's prior map likely violated the federal Voting Rights Act (VRA) -- violates the Equal Protection Clause of the Fourteenth Amendment as an impermissible racial gerrymander.

Facts and Procedure: The State of Louisiana redrew its congressional district maps after the 2020 census in response to population changes ("Prior Map"). The Prior Map included only one majority-black district. A group of black voters then filed a lawsuit challenging the Prior Map for violating the VRA by including only one majority-minority district. In 2022, a federal district court ruled that the Prior Map likely violated Section 2 of the VRA because it did not include an additional majority-minority district. The court entered a preliminary injunction requiring Louisiana to implement a new map before the 2022 election. Louisiana appealed the decision, and the U.S. Court of Appeals for the Fifth Circuit instructed the district court to provide time for a new map to be drawn.

Louisiana then drew a new map with the additional majority-minority district ("New Map"). The New Map was challenged, and a three-judge federal district court panel ruled that the New Map was an impermissible racial gerrymander that violated the Equal Protection Clause of the Fourteenth Amendment. Louisiana appealed that decision to the U.S. Supreme Court.

Analysis:

The U.S. Supreme Court applied strict scrutiny to the New Map and upheld the ruling that the New Map was an unconstitutional racial gerrymander. The Court determined that the VRA did not require Louisiana to create an additional majority-minority district, and therefore there was no "compelling interest" justifying the use of race in creating the New Map.

Historically, strict scrutiny applied in a racial gerrymandering case when a challenger showed that race was the government's predominant consideration. Strict scrutiny also required the government to prove that the use of race in drawing a district map was "narrowly tailored" to further a "compelling governmental interest."

The Supreme Court declared that compliance with the VRA may be a compelling interest for race-based districting only when the circumstances give rise to a strong inference of intentional discrimination. The Court explained that Section 2(a) of the VRA prohibits a districting map that results in denial or abridging of the right to vote on account of race or color. Interpreting Section 2(b) of the VRA, the Court declared that a denial or abridgement occurs when the political processes are not equally open to participation by members of a racial group of voters, in that such group has "less opportunity than other members of the electorate to ... elect representatives of their choice." In sum, the Court concluded that a violation of the VRA occurs only when the circumstances give rise to a strong inference that intentional discrimination occurred (i.e., districts were intentionally drawn to provide minority voters with less opportunity because of their race).

The case substantially affects the burden of proof in VRA litigation. Persons challenging a districting map must now produce an alternative map with a proposed majority-minority district that does not "use race as a districting criterion" and that complies with the government's legitimate districting objectives and political goals. The Supreme Court explained that if a government entity's goals in drawing a map include partisan gerrymandering, protecting incumbents, or other constitutional goals, then the challengers must produce an alternative map that also achieves those goals. Also, challengers now must provide an analysis that controls for party affiliation by showing that voters engage in racial bloc voting that cannot be explained by partisan affiliation. Finally, the analysis for a VRA Section 2 violation now must focus on evidence related to current-day *intentional* discrimination in voting based on race — as opposed to racial discrimination that occurred in the past.

Impact:

A. Implications for the California Voting Rights Act (CVRA)

Although the CVRA was not at issue in *Callais*, the decision creates the possibility of a future challenge to the constitutionality of the CVRA. The CVRA requires jurisdictions to transition from an at-large election system to a district-based election system if a challenger proves that the at-large election system, either through vote dilution or by abridging the rights of minority voters, impairs the ability of those voters to elect candidates of their choice or their ability to influence the outcome of an election. In order to force that transition, the CVRA does not require a showing of a strong inference that intentional discrimination occurred, which is required under *Callais* to prove a VRA violation. Instead, challengers may establish that the CVRA has been violated based on certain discriminatory effects of an at-large election system on a minority group. In other words, while the VRA is focused on addressing discriminatory intent, the CVRA is aimed at the effect of a voting system. A challenger to the CVRA might contend that under *Callais* the CVRA's explicitly race-conscious framework violates the Equal Protection Clause. It is unclear whether that challenge would be successful.

B. SB 1164

To provide the State of California with a defense against a potential constitutional challenge to the CVRA following the *Callais* decision, the Legislature is considering SB 1164. This bill passed in the Senate in May 2026, and as of this writing in August 2026 is pending in the Assembly. The bill would repeal and replace the CVRA with the "California Voting Rights Act of 2026." It would make significant changes to the CVRA — including amendments that appear to be aimed at insulating the CVRA from the *Callais* decision. Examples include deleting references to the federal VRA in the definitions of "protected class" and "racially polarized voting," and providing that the CVRA does not enforce any rights established under the United States Constitution or federal law.

X. *Moving Oxnard Forward, Inc. v. Lopez,* 173 F.4th 1070 (9th Cir. 2026)

Holding: City voters can approve per-candidate contribution limits and aggregate contribution limits for municipal elections, provided that they are closely drawn to a city's interest in preventing actual or apparent *quid pro quo* corruption.

Facts/Background: In 2020, voters in the City of Oxnard voted to approve Measure B, which included per-candidate contribution limits and aggregate contribution limits for municipal elections. The per-candidate contribution limits prohibited a person from making a contribution to a candidate that exceeded five hundred ($500) dollars, and political action committees from making a contribution to a candidate that exceeded one thousand ($1,000) dollars. The aggregate limits meant that per-candidate contribution limits applied not only to direct contributions made to candidates but also to indirect contributions made to candidates, such as those made to committees controlled by candidates. A political advocacy nonprofit organization challenged the City's two contribution limits, arguing that the per-candidate contribution limits violated the First Amendment and the aggregate contribution limits violated the First and Fourteenth Amendment.

The District Court for the Central District of California granted summary judgment in favor of the City. The District Court held that the per-candidate contribution limits did not violate the First Amendment because the City had demonstrated a sufficiently important governmental interest and the limits were closely drawn to that interest. The District Court held that the aggregate limits did not limit contributions made to committees formed to campaign for ballot measures, and thus the aggregate limits did not treat candidates who both ran for office and campaigned for ballot measures any differently than candidates who ran only for office. The political advocacy nonprofit organization appealed this decision.

Analysis: The Court of Appeals for the Ninth Circuit sitting *en banc* affirmed the District Court's decision. The Court recognized that the City had a sufficiently important governmental interest in targeting *quid pro quo* corruption or its appearance. The Court noted that the City needed only to demonstrate that the risk of *quid pro quo* corruption or its appearance was more than mere conjecture. Here, the City's evidence was sufficient: there were newspaper article alleging corruption by City officials; investigation and report by the District Attorney relating to corruption; a survey of residents favoring more accountability; and votes by 82% of the voters in the City that approved the contribution limits.

The Court next assessed whether the contribution limits were closely drawn to the City's interest in preventing *quid pro quo* corruption or its appearance by inspecting whether there were "danger signs" that the limits were so low as to harm the electoral process. *Randall v. Sorrell*, 548 U.S. 230 (2006) established four such danger signs, whether: (1) the limits are set per election cycle; (2) the limits apply to contributions from political parties; (3) the limits are the lowest in the nation; and (4) the limits are below those the Supreme Court has previously upheld.

Here, the Court found that the first three signs were not present because (1) the City's contribution limits were per candidate per election, not per office per election cycle; (2) the limits did not apply to political parties; and (3) the limits were comparable to those imposed by other California cities of comparable size.

For the (4) danger sign, the Court did not decide if it was present because, even if it was present, the limits were closely drawn to the City's legitimate interest. Assuming a sign was present, the Court considered "five sets of considerations" to determine whether the contribution limits were closely drawn: (1) whether the limits significantly restricted the amount of funding available for challengers to run competitive campaigns; (2) whether political parties had to follow the same low contribution limits that applied to other contributors; (3) whether volunteer services were considered to be contributions that counted toward the limits; (4) whether the limits were adjusted for inflation; and (5) whether any special justification warranting the limits existed.

Here, the Court found the following: (1) the limits did not significantly restrict the amount of funding available for challengers to run competitive campaigns because contributions in elections that exceeded the limits were likely to be small and the limits affected only a few candidates at best; (2) political parties did not have to abide by the limits, only people or political action committees; (3) volunteer's expenses were generally not considered to be contributions; and (4) the limits were adjusted for inflation. Since the first four factors weighed in the City's favor, the City did not need a special justification under (5). Therefore, the limits were closely drawn to the City's interest.

The Court also found that the aggregation limits did not discriminate between candidates who controlled ballot measure committees and those who did not because the limits applied *only* to direct and indirect contributions *made to candidates*. That is, the limits did not apply to contributions made to support ballot measure committees. (If they did, then candidates who also controlled ballot measures would be subject to contribution limits, whereas non-candidates would not be.)

Impact: The major impact of this case is that it shows voters in a city may approve per-candidate contribution limits and aggregate contribution limits. However, a city must be aware of two critical factors: (1) the city must be able to show a legitimate governmental interest in targeting *quid pro quo* corruption or its appearance; and (2) the limits must be closely drawn to that interest in accordance with the four *Randall* danger signs and the "five sets of considerations."

XI. *Theis v. InterMountain Education Service District,* No. 25-8039 (9th Cir. July 16, 2026)

Holding: A public school employee's display of books in his office while interacting with students constituted speech made pursuant to his official duties, not private citizen speech protected by the First Amendment. Speech that occurs in a student-facing educational setting and owes its existence to the employee's professional responsibilities can be regulated by the school district without violating the First Amendment.

Facts and Background: Roderick Theis served as an Education Specialist for the InterMountain Education Service District (IMESD), working in offices located within two Oregon public schools. Although he did not teach in a classroom, he regularly met with students in his offices to conduct evaluations and supervise standardized testing. Like other employees, Theis decorated his offices with personal items. During the 2024-2025 school year, in one office Theis displayed two children's books, *He is He* and *She is She*, that expressed support for a binary view of biological sex and gender identity. In the other office he displayed *Johnny the Walrus*, a children's book that some consider to convey an anti-transgender message. After receiving a complaint that the book displays were transphobic and in violation of an "Every Student Belongs" policy, IMESD directed Theis to remove the books. The policy defines a "bias incident" as a "hostile expression of animus" based on a protected characteristic, including gender identity.

Theis filed suit under 42 U.S.C. Section 1983, alleging the directive violated his First Amendment rights. The district court granted only partial preliminary relief, permitting him to display the books when students were not present but allowing IMESD to prohibit the displays during student interactions. After Theis continued to display the books while students were in his office, IMESD initiated disciplinary proceedings and ultimately terminated him. Theis appealed the denial of broader preliminary injunctive relief and the denial of his motion to enforce the injunction.

Analysis: The Ninth Circuit affirmed, concluding that Theis was unlikely to succeed on the merits. The court explained that the threshold inquiry in any public employee speech case is whether the employee spoke as a private citizen or as part of his governmental employment. Only speech made as a private citizen receives First Amendment protection.

Applying the fact-intensive inquiry required by the Supreme Court's 2006 decision in *Garcetti v. Ceballos*, the Ninth Circuit concluded that Theis' displays occurred within his professional role. The books were displayed in the offices where he met with students, were visible during evaluations and meetings, and were directed toward students rather than a general public audience. The court also reasoned that the displays "owed their existence" to his position as a public school employee because only by virtue of his employment could he use his office as a platform to communicate with students. Accordingly, the displays were government-controlled employee speech rather than private expression.

The court rejected Theis' argument that the Supreme Court's 2022 decision in *Kennedy v. Bremerton School District* altered the analysis. Unlike the football coach in *Kennedy*, whose private prayer occurred after his official duties had concluded, Theis displayed the books while actively performing his assigned responsibilities and interacting with students. The court emphasized that *Kennedy* protects private expression outside an employee's official duties but does not undermine longstanding precedent permitting school districts to control messages conveyed to students by employees acting within their professional roles. The Ninth Circuit also relied on consistent authority from numerous federal circuits holding that K-12 educators have no First Amendment right to present personal viewpoints to students contrary to school policy.

The court did not reach the balancing test under *Pickering v. Board of Education* because Theis' speech fell outside the First Amendment's protection under *Garcetti*. Without a likelihood of success on the merits, Theis could not obtain preliminary injunctive relief, and the district court properly denied both his motion for a preliminary injunction and his motion to enforce the existing injunction.

Impact: The *Theis* decision reinforces that public school employees generally speak as government employees and not private citizens when communicating messages to students in K-12 educational settings. The opinion rejects a broad application of *Kennedy v. Bremerton*, finding that the Supreme Court did not expand First Amendment protection to employee speech occurring during the performance of official duties or while interacting with students. School districts therefore retain broad authority to regulate employee speech and visual displays directed at students as part of the education setting.

XII. *Toy v. City and County of San* Francisco (2026) 121 Cal.App.5th 1292

Holding: City and County of San Francisco (City) did not waive application of validation statutes to a challenge to water rates by participating in litigation prior to raising non-compliance. Under Government Code section 53759, a challenge to water rates adopted after January 1, 2022 must be brought as a reverse validation action under Code of Civil

Procedure section 860 et seq. Compliance with the reverse validation procedures is a prerequisite to the court's jurisdiction, not an affirmative defense. The trial court also did not abuse its discretion in finding no good cause for plaintiffs' noncompliance.

Facts / Background: Government Code section 53759 (Section 53759) provides that any judicial action attacking an ordinance, resolution, or motion adopting or modifying a fee or charge for water or sewer service must be commenced within 120 days and must be brought pursuant to the validation statutes (Code Civ. Proc., § 860 et seq.). Section 53759 applies only to a fee or charge adopted, modified, or amended after January 1, 2022.

In May 2022, plaintiffs filed a class action against the City (the Toy Action) challenging water rates adopted by the San Francisco Public Utilities Commission (SFPUC) in 2018, alleging the rates improperly included costs for fire hydrant water flows and infrastructure in violation of Proposition 218. In May 2023, while the Toy Action was pending, the City adopted Resolution 23-103 (the Resolution) increasing water rates for July 1, 2023 through June 30, 2026. Before adopting the Resolution, the SFPUC sent notices to all retail water ratepayers providing the information required by Proposition 218, "and included notice to ratepayers they would have 120 days to file any legal challenge to the proposed water rates under the applicable reverse validation procedures."

On October 3, 2023, one of the Toy plaintiffs and two others filed a second class action against the City (the Aquilina Action) challenging the Resolution under Proposition 218. The Aquilina Action was styled "Refund, Declaratory Relief, and Equitable Relief, and Petition for Writ of Mandate" and affirmatively alleged that plaintiffs had presented Government Claims Act claims, which were denied. Plaintiffs served a summons on the City only and never published a summons directed to all interested persons.

The City answered the Aquilina Action in November 2023 without asserting that the action was procedurally improper because it was not brought pursuant to the validation statutes. For roughly 14 months the City defended the Aquilina Action without raising plaintiffs' failure to comply with the validation statutes, including by requesting a jury trial, participating in discovery and depositions, stipulating to consolidation of the two actions, and paying roughly half of the cost of class notice.

The trial court certified classes in both actions in June 2024, and the parties filed cross-motions for summary judgment in November. On the day oppositions were due in January 2025, the City filed a motion for judgment on the pleadings (MJOP) in the Aquilina Action, asserting that the complaint was untimely under Section 53759 and failed to comply with the validation procedures. The trial court granted the MJOP without leave to amend, holding that the validation procedures are mandatory and jurisdictional, that plaintiffs failed to comply, and that plaintiffs' claimed showing of good cause "does not remotely qualify." Plaintiffs appealed.

Analysis: The Court of Appeal (First District, Division Two) affirmed.

Validation statutes apply and supersede other remedies. "[W]hen the validation statutes apply, 'they supersede other mechanisms by which an interested private party might seek to challenge' the agency matter." (*Toy*, *supra*, 121 Cal.App.5th at p. 1296, quoting *Davis v. Fresno Unified School District* (2023) 14 Cal.5th 671, 685.) Section 53759 expressly incorporates the validation statutes, so plaintiffs had to file an in rem action and, within 60 days, serve a summons in the prescribed form, directed to all interested persons and to the City, by publication. (*Toy*, *supra*, 121 Cal.App.5th at pp. 1302-1303, citing Code Civ. Proc., §§ 861, 861.1, 863.) Plaintiffs did not, and the summons served on the City alone did not meet the statutory requirements. The Court of Appeal noted that in a validation action, the "only way for the court to acquire jurisdiction over the matter is to ensure that notice is given to all interested persons so that the resulting judgment can be conclusive as against them" and failure to comply with the requirement to publish the summons "deprives the court of the power to rule upon the matter." (*Toy*, *supra*, 121 Cal.App.5th at p. 1307, quoting *Katz v. Campbell Union High School Dist.* (2006) 144 Cal.App.4th 1024, 1032.)

No waiver by the City. Plaintiffs did not meaningfully dispute on appeal that the validation statutes applied. Instead, they argued that by answering, litigating, and moving for summary judgment, the City elected, under Code of Civil Procedure section 869, to contest its rates through ordinary litigation and thereby waived the validation procedures. The court disagreed. Waiver is the intentional relinquishment of a known right and must be proved by clear and convincing evidence, and plaintiffs did "not even attempt to show, much less show, such intentionality." (*Toy*, *supra*, 121 Cal.App.5th at p. 1304.) The court also found that plaintiffs' reliance on Section 869 was misplaced. Section 869 requires an interested person to bring a challenge "'within the time and the manner' set forth in the reverse validation procedures" or be forever barred. (*Id*. at p. 1305, quoting Code Civ. Proc., § 869.) Although a public agency may, as a plaintiff, contest its actions through other means, it "does not 'make a contest' of its water rates by defending them in litigation." (*Toy*, *supra*, 121 Cal.App.5th at p. 1306.) Further, the other remedies section 869 preserves for public agencies are forms of relief an agency may seek as an initiating party, not a dispositive motion, such as summary judgment. The court found compliance with the reverse validation procedures "is a prerequisite for the court's jurisdiction, not an affirmative defense to be proven by the agency." (*Id*. at p. 1305.)

No good cause. The court reviewed the trial court's good-cause determination for abuse of discretion. Section 53759 clearly incorporates the validation statutes and applies to a resolution adopting or changing a water fee. The court found the governing law was neither novel nor complex or debatable. The court held that plaintiffs' failure to comply could not be excused, and no abuse of discretion appeared.

Impact: The decision reinforces the need for plaintiffs to comply with the validation procedures when a statute makes those procedures applicable. Under Government Code section 53759 a challenge to a water or sewer rate adopted, modified, or amended after January 1, 2022, must be challenged by way of a reverse validation action, and a plaintiff's characterization of the action as one for a refund or challenge under Proposition 218 does not avoid the requirement. Because compliance "is a prerequisite for the court's jurisdiction, not an affirmative defense to be proven by the agency," an agency does not waive the requirement by answering and litigating the merits, and may raise it by a motion for judgment on the pleadings more than a year into the case.

To ensure the protections provided by the validation statutes, a public agency's Proposition 218 notice should have the statutorily required "statement that there is a 120-day statute of limitations for challenging any new, increased, or extended fee or charge." (Gov. Code, § 53759(d).)

XIII. *Ventura Harbor Rest. Assocs., Inc. v. Ventura Port Dist.,* 121 Cal. App. 5th 809 (2026)

Holding: When a city leases commercial real property to a tenant and the lease contains a percentage rent clause based on a percentage of the tenant's gross income, the clause does not impose a tax in violation of Article XIII C of the California Constitution. Additionally, if the tenant is a restaurant that sells food and alcoholic beverages, a percentage clause does not violate Article XX, Section 22 of the California Constitution, which grants the State the exclusive right to license and regulate alcohol sales.

Facts/Background: In 1996, voters passed Proposition 218, which added Article XIII C to the California Constitution. Article XIII C requires voter approval of all taxes imposed by local governments. In 2010, voters passed Proposition 26, which expanded the definition of "tax" to include any levy, charge, or exaction of any kind imposed by a local government. Article XX, Section 22 provides that the State has the exclusive right to regulate the sale and purchase of alcoholic beverages.

In 2016, a restaurant operator in Ventura Harbor agreed to sublease commercial real property under a master lease with the Ventura Port District ("Port District"). Both the master lease and the sublease stated that the lessee or sublessee must pay a percentage of gross income derived from all sales conducted on or from the premises. The sublease provided that the premises must be used and occupied only for a commercial restaurant and bar business and related purposes.

In 2022, the restaurant operator sued the Port District, arguing that the percentage rent clause violated Article XIII C and Article XX, Section 22 of the California Constitution. However, the Superior Court ruled against the restaurant operator and granted the Port District's motion for summary judgment, determining that the percentage rent clause did not violate Article XIII C and Article XX, Section 22. The restaurant operator appealed this decision.

Analysis: The Court of Appeal for the Second District affirmed. The Court held that the percentage rent clause "clearly falls within the …. exception" in Proposition 26 for charges imposed for the purchase, rental, or lease of local government property found in Article XIII C, Section 1, subdivision (e)(4). The percentage rent clause met this exception because it imposed a charge for the rental or lease of the Port District's property.

The Court also held that the exception for charges imposed for the purchase, rental, or lease of local government property is not subject to the reasonableness requirement found in other exceptions in Proposition 26. The Court noted that the specific exception under Article XIII C, Section 1, subdivision (e)(4) does not contain a reasonableness requirement, and that it would be "absurd" to think otherwise, as the property rent would become largely uncorrelated with the value of the property being leased. The Court distinguished Zolly v. City of Oakland, 47 Cal. App. 5th 73 (2020) from this case because a local government's charge of percentage lease of commercial real property could not be characterized as a franchise fee.

The restaurant operator also argued that the percentage rent clause violated Article XX, Section 22 because it applied to revenue from the sale of alcoholic beverages, for which the State has the exclusive right and power to license and regulate. However, the Court found that the percentage rent clause did not conflict with Article XX, Section 22 because it was not created to regulate the manufacture, sale, or purchase of alcoholic beverages. The percentage rent clause applied to all sales conducted on or from the premises, not just to sales of alcoholic beverages.

Impact: The major impact of this case is that it upholds a city's ability to require a percentage rent clause when it leases commercial real property to a tenant under Article XIII C, Section 1, subdivision (e)(4). The case also helpfully clarifies that the amount of a charge under Article XIII C, Section 1, subdivision (e)(4) is not subject to a reasonableness requirement.

XIV. *Voice of San Diego v. San Diego Unified School District,* 120 Cal.App.5th 923 (2026)

Holding: Under the California Public Records Act (CPRA; Government Code § 7920.000 et seq.), the requirement in § 7922.530, subdivision (a) that an agency make disclosable records "promptly available" does not impose any fixed deadline, measured in days, for the actual production of records. Whether an agency has produced records promptly is a fact-intensive determination, made case-by-case, turning on the scope and burden that the particular request imposes on the particular agency. Because a taxpayer action under Code of Civil Procedure § 526a does not lie where the challenged governmental conduct is lawful, and the District's records practices were lawful under this construction, the Court of Appeal affirmed the judgment denying relief.

Publication Note: Only Part I of the court's Discussion, its construction of Government Code § 7922.530, is certified for publication. Parts II and III, which review the trial court's factual findings for substantial evidence, address the plaintiff's asserted "399-day average" production time, and resolve certain forfeited claims, are unpublished. They are summarized below only as background.

Facts and Procedure: Voice of San Diego, an online news service that reports extensively on local government, and its editor-in-chief, alleged that the San Diego Unified School District, the second largest school district in California, engaged in a regular and ongoing practice of delaying, obstructing, and withholding public records in violation of the CPRA. In addition to its CPRA causes of action, Voice asserted a taxpayer claim under Code of Civil Procedure § 526a, seeking to enjoin what it characterized as the District's illegal expenditure of public funds to carry out that unlawful practice.

The litigation spanned six years and extensive discovery. The trial court summarily adjudicated and later denied the CPRA causes of action, and, following a bifurcated hearing supported by more than 5,500 pages of exhibits, denied the taxpayer cause of action after finding that the District did not maintain an unlawful practice of delaying or withholding records. On appeal, Voice challenged only the denial of its taxpayer claim, the viability of which turned on whether the District's production practices were lawful, and therefore, on the meaning of "promptly available."

Analysis:

Statutory Text and Structure: The court began with the language of Government Code § 7922.530, subdivision (a), which requires an agency to make records "promptly available," but sets no deadline expressed in a number of days. The court contrasted the neighboring duty-of-determination provision, Government Code § 7922.535, subdivision (a), which does impose a precise deadline (10 days from receipt, extendable to twenty-four in enumerated "unusual circumstances"). Because the Legislature demonstrated in the same statutory scheme that it knew how to set a firm deadline, its decision not to do so for the production of records was significant. The court declined to adopt a "days or weeks" requirement on the statute, reasoning that courts may not add language the Legislature omitted.

Federal Authority: The court found Voice's reliance on the D.C. Circuit's decision in Citizens for Responsibility and Ethics in Washington v. Federal Election Commission (D.C. Cir. 2013) unpersuasive. 711 F.3d 180. California courts are not bound by decisions construing the federal Freedom of Information Act (FOIA), and parallel construction is appropriate only where warranted by the question presented. Citizens construed the federal equivalent to the CPRA's duty of determination, not its duty of disclosure, and its statement that production should ordinarily follow "within days or a few weeks" was unaccompanied dictum that offered no guidance on Government Code § 7922.530.

Meaning of "Promptly": Giving the term its ordinary meaning, "ready and quick to act as occasion demands," the court held that whether a disclosure is prompt depends on the circumstances of each case and necessarily requires consideration of the scope and burden imposed on the responding agency by the particular request. The court identified a non-exhaustive list of relevant factors (e.g., specificity and breadth of the request, nature and location of the records, volume of data to be searched, storage medium, level of review required for exemptions and redactions, complexity of the request, and size, scope, and complexity of the responding agency). The court further held that external circumstances beyond an agency's control, are proper considerations, paralleling the "unusual circumstances" the Legislature recognized at the determination stage. At the same time, the court cautioned that the inquiry is not boundless, and a court should not accept every reason an agency offers.

Taxpayer Claim: Because a taxpayer action under Code of Civil Procedure § 526a does not lie against lawful conduct, and the District's production practices were lawful under the proper construction of "promptly," the taxpayer claim failed.

Unpublished Portions (Background Only): In the unpublished portions of its opinion, the court held that substantial evidence supported the trial court's finding that the District maintained no unlawful practice. The court explained that Voice's asserted "399-day average" production time was unsupported and misleading. Voice had selected only 31 of the more than 75 requests it submitted during the relevant period, relied on the date of last production while disregarding the first dates of rolling productions, and in some instances measured "delay" from immaterial later supplements. The records showed that Voice's requests were frequently overbroad, sought records in multiple formats, spanned numerous departments and schools, required extensive redactions, and were processed amid a high volume of requests and, in part, during COVID-19 closures. The court also held that Voice had forfeited its arguments under Government Code § 7922.535.

Impact:

The CPRA imposes no bright-line deadline for the production of records. An agency's obligation is to act promptly in light of the circumstances, and the reasonableness of its production time is measured against the scope and burden of the particular request. Because "promptness" is assessed through multiple factors, an agency's ability to prevail depends on documenting the burden a request imposed. The duty of determination (Government Code § 7922.535) carries a firm ten-day (or twenty-four-day) deadline; the duty of disclosure (Government Code § 7922.530) does not. The flexible "promptly" standard governs only the production of records.

LEAGUE OF CALIFORNIA CITIES

Expanding Public Access: SB 707's Updates to the Brown Act

Annual Conference 2026

EXPANDING PUBLIC ACCESS: SB 707'S UPDATES TO THE BROWN ACT

Presenters:

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This summary provides a comprehensive overview of Senate Bill 707 (SB 707), which substantially updates and modernizes key components of the Ralph M. Brown Act (Brown Act).[1]

This summary has three main parts:

Part I. **Requirements for "Eligible Legislative Bodies."** This part summarizes and analyzes the most substantial changes to the Brown Act under SB 707. These changes only affect the main governing bodies of certain types of agencies, including the city council of most cities, the board of supervisors of most counties, and the board of directors of very large special districts. The provisions described in Part I took effect on July 1, 2026.

Part II. **Teleconferencing Updates**. This part summarizes and analyzes changes to the teleconferencing provisions of the Brown Act. While "traditional" Brown Act teleconferencing remains unchanged, SB 707 makes numerous changes to the post-COVID "alternative" teleconferencing methods. Some of these changes are updates to existing teleconferencing methods, while other changes expand teleconferencing options for certain legislative bodies, subject to particular restrictions. The provisions described in Part II took effect January 1, 2026.

Part III. **Other Brown Act Changes Affecting All Agencies**. This part summarizes and analyzes all other changes to various provisions of the Brown Act. These changes apply to all agencies' legislative bodies, and include: an extension of the Brown Act social media rules, a requirement to provide all legislative body members with a copy of the Brown Act, posting special meeting agendas online, and allowing for the removal of virtual meeting attendees who are disrupting a meeting. The provisions described in Part III took effect on January 1, 2026.

It is important for members of legislative bodies, agency clerks and secretaries, and other relevant agency officers and employees to have a comprehensive understanding of these changes. If you have any questions about SB 707, please contact your city attorney or the authors of this summary.

I. REQUIREMENTS FOR ELIGIBLE LEGISLATIVE BODIES

Several of the most significant new requirements under SB 707 apply to "eligible legislative bodies," a new term introduced and defined in Section 54953.4.

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[1] Gov. Code § 54950 *et seq.* All statutes referenced in this memo are from the California Government Code, unless otherwise noted.

Overall, these new requirements mandate hybrid meetings that allow the public to view and participate in meetings remotely to increase public accessibility to open meetings. These requirements also include specific measures to be taken to avoid potential meeting disruptions. In addition, these new requirements mandate reasonable efforts to ensure open meetings are accessible to non-English speaking populations, as well as any other populations potentially less engaged with the agency's meetings.

1. **What is an Eligible Legislative Body? (Section 54953.4(d)(2))**

The new term "eligible legislative body" means any of the following:

a. A city council of a city with a population of 30,000 or more;

b. A board of supervisors of a county, or city and county, with a population of 30,000 or more;

c. A city council of a city located in a county with a population of 600,000 or more; or

d. The board of directors of a special district that has an internet website and meets any of the following requirements:

   i. The special district has boundaries that include an entire county with a population of 600,000 or more, and employs over 200 full-time equivalent employees;
   ii. The special district has over 1,000 full-time equivalent employees; or
   iii. The special district has annual revenues that exceed four hundred million dollars ($400,000,000),[2] and employs over 200 full-time equivalent employees.

2. **Mandatory Hybrid Meetings Using Two-Way Telephonic Service or Two-Way Audiovisual Platform (Section 54953.4(b)(1), (e)(3-4))**

SB 707 requires all meetings of eligible legislative bodies to include an opportunity for the public to attend through a "two-way telephonic service" or "two-way audiovisual platform."

A "two-way telephonic service" is a service that does not require internet access and allows participants to dial a telephone number to listen and participate (provide public comment) verbally. A "two-way audiovisual platform" is an online platform that provides participants with the ability to participate in a meeting through both an interactive video conference and a two-way telephonic service.

SB 707 does contain a limited exception to these requirements. An eligible legislative body is not required to include an opportunity for the public to attend through these methods if adequate

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[2] The amount is based on the most recent Financial Transaction Report data published by the California State Controller, and will be indexed for inflation starting on January 1, 2027.

telephonic or internet service is not operational at the meeting location (e.g., there is no phone or internet service at the meeting location). However, if adequate telephone or internet service is operational during only a portion of the meeting, the eligible legislative body must ensure the public can attend the meeting via the telephonic service or audiovisual platform during that portion.

Because of these new requirements, many agencies that had not yet upgraded their council or board chambers to accommodate a two-way audiovisual platform or two-way telephonic service will be required to do so. This may be part of the reason the Legislature delayed these requirements until July 1, 2026.

Please also note that although an agency has the option of providing two-way telephonic service (instead of a two-way audiovisual platform), some of the teleconferencing requirements discussed in Part II, Section 3 of this summary would require that the two-way telephonic service be accompanied by live webcasting (e.g., broadcasting on YouTube) if a member of the legislative body is teleconferencing under those provisions.

3. **Adoption of Policy on Disruption of Telephonic or Internet Service; Requirements to Fix Disruptions (Section 54953.4(b)(1)(i)(I)(ib))**

On or before July 1, 2026, all eligible legislative bodies must adopt a policy regarding disruption of telephonic or internet service occurring during meetings. The policy must be adopted in open session, and may not be adopted on the consent calendar. The policy must address procedures for recessing and reconvening the meeting in the event of a disruption and the efforts the body will take to attempt to restore service. The policy must be consistent with the requirements described below.

If a disruption of service occurs during the open portion of a meeting and thereby prevents members of the public from attending or observing the meeting, the eligible legislative body must recess the meeting for up to one hour and make a good faith attempt to restore service. The body may not reconvene the open session for at least one hour after the disruption occurred or until service is restored, whichever is earlier. The legislative body should announce when service has been restored and resume immediately thereafter. The eligible legislative body may, however, meet in an authorized closed session during this recess.

If a disruption cannot be remedied and at least one hour has passed, the eligible legislative body may reconvene in open session but must adopt a finding, by roll call vote, that: (1) good faith efforts were taken to restore the service; and (2) the public interest in continuing the meeting outweighs the public interest in remote public access.

4. **Meetings of Eligible Legislative Bodies That Are Not Subject to Hybrid Telephonic/Audiovisual Requirements (Section 54953.4(b)(1)(i)(II))**

Certain meetings of eligible legislative bodies are not required to include an opportunity for members of the public to attend through two-way telephonic or audiovisual platforms, as detailed above. Specifically, the requirements do not apply to meetings held to:

a. Attend a judicial or administrative hearing where the local agency is a party;

b. Inspect real or personal property where the topic of the meeting is limited to items directly related to that property;

c. Meet with a federal or state elected or appointed official solely to discuss legislative or regulatory issues affecting the local agency and within the jurisdiction of that elected/appointed official;

d. Meet in or near a facility owned by the local agency where the meeting topic is limited to items directly related to the facility; or

e. Meet under the "emergency meeting" provisions of the Brown Act.

5. **Translation and Interpretations at Meetings (Section 54953.4(b)(2))**

Although SB 707 does not require that eligible legislative bodies provide translation or interpretation of meetings, the eligible legislative body must reasonably assist members of the public who wish to translate or receive interpretation at a meeting, as long as such actions do not disrupt the meeting. Assistance under this requirement may include:

a. Arranging space for one or more interpreters;

b. Allowing extra time during a meeting for the interpretation to occur[3]; or

c. Ensuring participants may use their personal equipment or reasonably access the facilities for participants to access commercially available interpretation services.

6. **Engagement with Underrepresented Communities (Section 54953.4(b)(3))**

This section requires eligible legislative bodies to take reasonable measures to encourage the public, including those in underrepresented and non-English speaking communities, to participate in public meetings. There are a number of aspects of these requirements, which are described in detail below.

a. ***Meeting Agenda and Document Request System***. The eligible legislative body must have a system for electronically accepting and fulfilling requests for meeting agendas and meeting documents through e-mail or an integrated agenda management platform. Information about how to make a request must be accessible through a *prominent, direct* link on the primary webpage of the legislative body.

b. ***Website Dedicated to Public Meeting Process***. In addition, the eligible legislative body must create and maintain an accessible internet webpage dedicated to public meetings that includes or provides a link to all of the following: (1) a general explanation of the public meeting process; (2) an explanation of the procedures for a member of the public to provide in-person, remote, or written public comment;

[3] This is already a specific requirement of the Brown Act. Under Section 54954.3(b)(2), when a legislative body limits time for public comment, the body must provide at least twice the allotted time to a member of the public who uses a translator to ensure that non-English speakers receive the same opportunity to directly address the body.

(3) a calendar of public meeting dates including time and location of each meeting; and (4) the current posted agenda(s) of the body. This webpage must be translated into all "applicable languages" (defined below) and each translated webpage must be accessible through a *prominent, direct* link on the primary webpage of the legislative body.

c. ***Translation of Agendas Into Required Languages; Allowing Posting of Additional Translations***. The agenda for each meeting of an eligible legislative body must be translated into all "applicable languages" and posted in accordance with the Brown Act. Each translated agenda must include instructions describing how to join the meeting by telephonic or internet-based service. A translation made using a digital translation service (e.g., Google Translate, Microsoft Translator, etc.) will satisfy these translation requirements. Please note that these translation requirements only apply to the agenda itself; the entire agenda packet is not required to be translated.

An "applicable language" is any language spoken jointly by 20 percent or more of the agency's applicable population, if 20 percent or more of the population that speaks that language in the city or county speaks English less than "very well." For cities and counties, the "applicable population" will be the population of the city or county. For special districts, the applicable population is determined, at the board of directors' discretion, based on: (1) the population of the county with the greatest population within the boundaries of the special district; or (2) the population of the district's service area, if the district has data to determine such information.

In determining "applicable languages," agencies must use data from the most recent American Community Survey. However, an eligible legislative body may choose to determine applicable languages based on another source if it makes a finding, based on substantial evidence, that the other source provides equally or more reliable data for the body's jurisdiction.

In some cases, an eligible legislative body may find there are multiple applicable languages within its population. If more than three languages meet the criteria, the "applicable languages" will be the three languages spoken by the largest percentages of the population.

In addition to translating agendas into applicable languages, agencies must make available a physical location that is freely accessible to the public, and reasonably close to the physical location where agendas are posted, to allow members of the public to post additional translations of the agenda in that location.

Regarding additional space for members of the public to physically post other agenda translations, agencies should clearly and prominently label these areas "for posting true and accurate agenda translations only" and should routinely remove any other types of materials posted there; this will ensure that these areas are maintained as "limited public forums" under the First Amendment and allow the agency to remove any non-agenda materials posted there while minimizing legal risks. If the agency does not clearly label these spaces, or only selectively removes materials based on their content or viewpoints, the agency could be at risk of violating a member of the public's First Amendment free speech rights.

d. **Inviting Underrepresented Groups to Meetings.** Lastly, in addition to encouraging engagement amongst underrepresented and non-English speaking communities, SB 707 requires eligible legislative bodies to make reasonable efforts to invite groups that do not traditionally participate in public meetings to attend. These groups include, but are not limited to: (1) media organizations that provide news coverage in the jurisdiction, including those who provide news to non-English speaking communities; and (2) good government, civil rights, civic engagement, neighborhood, and community group organizations or similar organizations or groups, including those active in non-English speaking communities.

   Accordingly, eligible legislative bodies may wish to develop, adopt, and implement a written plan for identifying these groups within their jurisdictions and how outreach efforts will be made on behalf of the eligible legislative body on a periodic or regular basis to avoid any risks of noncompliance.

II. UPDATES TO TELECONFERENCING RULES

In 1988, the California Legislature first adopted provisions allowing for teleconferencing under the Brown Act. Within the past five years, the Legislature has greatly expanded teleconferencing provisions, first under AB 361 (teleconferencing during declared emergencies) and then under AB 2449 (teleconferencing for "just cause" or personal medical emergency reasons). SB 707 largely maintains the existing teleconferencing options for legislative body members, but reorganizes the provisions and adds new teleconferencing options under certain circumstances. This table summarizes the differences:

Teleconferencing Exceptions	Prior Version of Brown Act	Post-SB 707 Brown Act
Traditional	GC 54953(b)	GC 54953(b)
American with Disabilities Act	N/A[4]	GC 54953(c)
Health Authority	N/A	GC 54953.8.1
State of Emergency	GC 54953(e)	GC 54953.8.2
Just Cause	GC 54953(f)	GC 54953.8.3

[4] Although not specifically addressed in the Brown Act at the time, California Attorney General Opinion No. 23-1002 (2024) concluded that the ADA requires a legislative body to allow remote participation as a reasonable accommodation for a member with a qualifying disability that precludes in-person attendance at a meeting.

Emergency Circumstance	GC 54953(f)	N/A (now part of Just Cause)
Neighborhood Council	GC 54953.8	GC 54953.8.4
Community College Student Organization	GC 54953.9	GC 54953.8.5
Eligible Subsidiary Body	N/A	GC 54953.8.6
Multijurisdictional body	N/A	GC 54953.8.7

1. **"Traditional" Brown Act Teleconferencing Remains the Same (Section 54953(b))**

The "traditional" Brown Act teleconferencing rules that predate COVID-19 remain the same. Under the traditional Brown Act teleconferencing rules, legislative body members can teleconference as long as: (1) the agenda is posted at all meeting locations, including the teleconference locations; (2) the agenda identifies the teleconference locations; (3) the public can attend and provide public comment from all meeting locations, including the teleconference locations; (4) at least a quorum of the body participates from within the agency's jurisdiction; and (5) all votes are taken by rollcall.

2. **Teleconferencing as a Reasonable Accommodation for a Disability (Section 54953(c))**

Under SB 707, the Brown Act now allows a member of a legislative body with a disability to participate in a meeting by remote participation as a reasonable accommodation under the Americans with Disabilities Act (ADA) or similar State laws. Such participation is subject to the following requirements: (1) the member must participate through both audio and visual technology, unless a physical condition related to their disability results in a need to participate without video; and (2) before any action is taken, the member must disclose whether anyone 18 or older is in the room with them and the general nature of their relationship to that person. This type of participation is treated like in-person participation, including for quorum purposes, and other teleconferencing requirements under the Brown Act do not apply.

3. **Alternative Teleconferencing Rules (Section 54953.8)**

As a result of the COVID-19 pandemic, in recent years the Legislature authorized new options for teleconferencing that do not have the same requirements as classic Brown Act teleconferencing (e.g., listing the teleconference location on the agenda, posting at the teleconference location, etc.).[5] These options started with teleconferencing during declared emergencies under AB 361, and later included teleconferencing for "just cause" or personal medical emergencies under AB 2449.

[5] Please note that if a member of a legislative body is using any type of teleconferencing—whether "traditional" or "alternative"—a rollcall vote is required for all votes of the legislative body. (Gov. Code § 54953(b)(2)(A).)

Now, under SB 707, the Legislature has revised and restated all of these "alternative" teleconferencing provisions, and added new alternative teleconferencing options for specific types of bodies or agencies. Specifically, Government Code Section 54953.8 establishes the rules that apply to *all* of these alternative teleconferencing options, while the provisions that immediately follow Section 54953.8 describe a specific type of alternative teleconferencing and specific rules that apply to that type of teleconferencing. Following that same structure, this document will first summarize the general rules that apply to all alternative teleconferencing options, and the following sections will describe the specific type of alternative teleconferencing and its related rules.

a. ***Requirements That Apply to All Alternative Teleconferencing Options***. The following requirements apply to all alternative teleconferencing options:

- The public must be able to participate via teleconference, using either a two-way audiovisual platform (like Zoom) or a two-way telephonic service and live webcasting.

- The agenda must notify the public of how to access and provide public comment for the meeting, including through the phone or internet option.

- If a disruption prevents broadcasting of the meeting, or if a disruption within the agency's control affects the ability to provide public comments, the body can take no further action until the disruption is fixed.

- Comments cannot be required to be submitted in advance; there must be an opportunity to provide comments in real time.

- The body must allow a reasonable time for members of the public to request to speak or otherwise be recognized to provide comments.

- The meeting minutes must state the names of members who attended via teleconference and the alternative teleconferencing provision under which they participated. (This is a new requirement.)

- Bodies must have and implement procedures for receiving and resolving requests for reasonable accommodations for disabilities. Agendas must include notice of the procedure for receiving and resolving requests.

- Before any action is taken, any member of the legislative body who is teleconferencing under these provisions must identify whether there is anyone 18 or over in the room with them and their relationship to that person.

- Agencies must identify and provide a list of potential meeting locations to their legislative bodies for conducting meetings.

The following subsections (b) through (f) of this summary describe particular types of alternative teleconferencing that a legislative body may use, if applicable.

b. ***Alternative Teleconferencing: Proclaimed State or Local Emergencies. (Section 54953.8.2)*** This section authorizes teleconferencing (including fully remote meetings) during a proclaimed state of emergency or local emergency, if the requirements of the section are met.

The requirements are largely similar to emergency teleconferencing provisions adopted under AB 361, which many agencies used to hold fully remote or hybrid meetings during the proclaimed COVID-19 state of emergency. Such requirements include: (1) a majority-vote finding that, due to the emergency, meeting in person would present imminent risks to the health or safety of attendees; and (2) periodic renewal of the findings every 45 days.

Under AB 361, this teleconferencing option was only available for emergencies proclaimed by the California Governor. Under SB 707, this option now also allows teleconferencing and fully remote meetings during a declared "local emergency," which is defined as a condition of extreme peril to persons or property proclaimed by the governing body of the local agency affected under the California Emergency Services Act, or a local health emergency declared under Health and Safety Code Section 101080. A local emergency refers only to local emergencies within the boundaries of an agency's jurisdiction.

c. ***Alternative Teleconferencing: Just Cause. (Section 54953.8.3)*** This section continues the type of teleconferencing authorized under a prior law, AB 2449, which could be used when a legislative body member had "just cause" or a personal medical emergency.

Under SB 707, the requirements are largely similar to the prior just cause teleconferencing, and the personal medical emergency aspect has been absorbed into the definition of "just cause."

Under SB 707, the definition of "just cause" now means: (1) childcare or caregiving need of a child, parent, grandparent, grandchild, sibling, spouse, or domestic partner that requires them to participate remotely; (2) a contagious illness that prevents a member from attending in person; (3) a need related to a physical or mental condition that is not subject to a reasonable accommodation under Section 54953; (4) travel while on official business of the legislative body or another state or local agency; (5) an immunocompromised child, parent, grandparent, grandchild, sibling, spouse, or domestic partner of the member that requires the member to participate remotely; (6) a physical or family medical emergency that prevents a member from attending in person; and (7) military service obligations that result in a member being unable to attend in person because they are serving under official written orders for active duty, drill, annual training, or any other duty required as a member of the California National Guard or a United States Military Reserve organization that requires the member to be at least 50 miles outside the boundaries of the local agency.

The requirements specific to this type of teleconferencing include:

- a quorum of the body must participate in person from a single physical location within the agency's boundaries;

- the member who needs to teleconference must notify the body at the earliest convenience (including the start of the meeting) of their need to participate for just cause, including a general description of the circumstances justifying remote participation;

- the member must use both audio and visual technology (camera on) during the meeting; and

- the minutes must identify the specific just cause basis the member used to teleconference.

The limits for just cause teleconferencing have been simplified as follows: (1) two meetings per year, if the legislative body regularly meets once per month or less; (2) five meetings per year, if the legislative body regularly meets twice per month; or (3) seven meetings per year, if the legislative body regularly meets three or more times per month. For the purposes of this provision, a "meeting" includes any number of meetings of the legislative body held on the same calendar day.

d. ***Alternative Teleconferencing: Eligible Subsidiary Bodies. (Section 54953.8.6)*** This new teleconferencing option allows teleconferencing by eligible subsidiary bodies. An "eligible subsidiary body" means a legislative body that is: (1) not the main governing body of an agency; (2) serves exclusively in an "advisory capacity"; (3) is not authorized to take final action on legislation, regulations, contracts, licenses, permits, or any other entitlements, grants, or allocations of funds; and (4) does not have primary subject matter jurisdiction that focuses on elections, budgets, police oversight, privacy, access or removal of library materials, or taxes or related spending proposals. Notably, however, an elected official serving as a member of an eligible subsidiary body in their official capacity cannot participate by teleconference under this section.

To use this type of teleconferencing, the subsidiary body must designate one physical location within the agency's boundaries where the members who are not participating remotely will be present and members of the public may attend. At least one staff member of the agency must also be present at the physical meeting location. Other requirements are as follows:

- the teleconferencing members must use both audio and visual technology (camera on) during the meeting, except when infeasible, such as during an internet connectivity issue, and the member must announce the reason for their nonappearance;

- the legislative body that established the subsidiary body must make certain findings by majority vote before the subsidiary body can use teleconferencing under this section, and every six (6) months thereafter; and

- after the primary legislative body has made findings, the subsidiary body must also approve the use of teleconferencing by majority vote.

This section also includes a requirement that an eligible subsidiary body may request to present "any recommendations" to the legislative body that created it. Upon receiving such a request, the legislative body that created the subsidiary body must hold a discussion at a regular meeting within 60 days of receiving the request (or if none, at the next regular meeting after the request is received). The discussion cannot be placed on a consent calendar, but may be combined with making the findings required to reauthorize this type of teleconferencing. Further, the legislative body that created the subsidiary body cannot take any action on a recommendation included in the subsidiary body's report until the next regular meeting *after* discussion of the subsidiary body's recommendations. The language relating to these requirements are included among the provisions relating to the findings necessary to authorize subsidiary bodies to use teleconferencing, so it is unclear if the Legislature intended for these provisions to only relate to teleconferencing-related subjects, or are intended to allow the subsidiary body to make "*any* recommendations" to the legislative body that created it, and to require that legislative body to discuss those recommendation at a regular meeting.

e. Alternative Teleconferencing: Eligible Multijurisdictional Bodies. (Section 54953.8.7). This new teleconferencing option allows members of eligible multijurisdictional bodies to use this form of teleconferencing if the requirements of this section are met. Under the law, an "eligible multijurisdictional body" means a legislative body with appointed members that includes representatives from more than one local agency, or a legislative body of a joint powers agency.

The requirements to use this type of teleconferencing are:

- The body has adopted a resolution that authorizes the members to use this type of teleconferencing at a regular meeting in open session.

- At least a quorum of the members must participate from one or more physical locations that are open to the public and within the boundaries of the agency.

- In order to receive a meeting stipend or per diem compensation for attending the meeting, members must attend from a physical location that is open to the public. Members attending remotely are not eligible for compensation.

- A member can only use this section to teleconference from a remote location if: (a) the agenda identifies which member(s) are participating remotely; (b) the member must use both audio and visual technology (camera on) during the meeting; and (c) the member is more than 20 miles each way from any physical meeting location that is open to the public.

- A member's use of this type of teleconferencing is limited to: (a) two meetings per year, if the legislative body regularly meets once per month or less; (b) five meetings per year, if the legislative body regularly meets twice per month; or (c) seven meetings per year, if the legislative body regularly meets three or more times per month. For the purposes of this provision, a "meeting" includes any number of meetings of the legislative body held on the same calendar day.

f. ***Other Alternative Teleconferencing Options: Health Authorities, Eligible Neighborhood Councils, and Eligible Community College Student Organizations.*** The alternative teleconferencing options under SB 707 also include specific provisions for health authorities,[6] eligible neighborhood councils,[7] and eligible community college student organizations.[8] Definitions for these types of agencies or legislative bodies are in the footnotes below. If this type of teleconferencing may be relevant to your agency, please follow up with your attorney.

III. OTHER BROWN ACT CHANGES AFFECTING ALL AGENCIES

1. Social Media Restrictions, Removal of Sunset (Section 54952.2)

In 2020, the Legislature enacted social media restrictions for members of legislative bodies. For example, a majority of a body cannot use social media to "discuss among themselves" official agency business. In addition, a member of a legislative body cannot respond directly to a communication made, posted, or shared that relates to the body's jurisdiction by any other member

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[6] A health authority means any entity created pursuant to Welfare and Institutions Code Sections 14018.7, 14087.31, 14087.35, 14087.36, 14087.38, and 14087.9605, any joint powers authority created under the Joint Exercise of Powers Act for the purpose of contracting pursuant to Welfare and Institutions Code Section 14087.3, and any advisory committee to a county-sponsored health plan licensed pursuant to certain provisions of the Health and Safety Code if the advisory committee has 12 or more members. (Gov. Code § 54953.8.1(c).)

[7] An eligible neighborhood council means a neighborhood council that is an advisory body with the purpose to promote more citizen participation in government and make government more responsive to local needs that is established pursuant to the charter of a city with a population of more than 3,000,000 people that is subject to this chapter. (Gov. Code § 54953.8.4(b)(2).) This provision was generally intended to apply to neighborhood councils of the City of Los Angeles.

[8] Eligible community college student organization means a student body association organized pursuant to Education Code Section 76060 or any other student-run community college organization that is required to comply with the meeting requirements of the Brown Act that is in any community college recognized within the California Community Colleges system and includes the Student Senate for California Community Colleges.

of the body on social media. This means a member cannot "like," react, comment, post an emoji, etc. on another member's post about an item within their jurisdiction.

These social media requirements contained a provision that they would remain in effect only until January 1, 2026. SB 707 removed this language, effectively making the social media restrictions permanent additions to the Brown Act. The substance of the previous social media requirements remains the same.

2. **Providing Brown Act Copies (Section 54952.7)**

The Brown Act previously allowed legislative bodies to adopt a requirement that the agency provide a copy of the Brown Act to its members, incoming members, and members of appointed bodies. Under SB 707, local agencies are required to provide a copy of the Brown Act to all elected and appointed members of legislative bodies of the agency. This change requires all members of all legislative bodies to receive a copy of the Brown Act, whether they have chosen to receive it or not.

Under a careful reading of the statute, agencies are only required to provide a copy of the Brown Act to members of legislative bodies one (1) time: when they are elected or appointed. Agencies can choose whether to provide an updated copy of the Brown Act to all legislative body members each year (assuming there are changes), but are not required by law to do so.

3. **Meeting Recordings (Section 54953.5)**

The Brown Act guarantees the public's right to record a public meeting. This section guarantees the right to record the proceedings, as long as the recording is not disruptive to the meeting. The requirements of this section have not changed, but the statute has been updated to remove "audio or video recorder" and "motion picture camera." This accounts for changes in technology, including smart phones, screen recorders, and any other devices that could capture in-person or virtual recordings.

4. **Rules for Appointed Bodies (Section 54953.7)**

The open meeting laws of the Brown Act are a floor, not a ceiling. This section of the Brown Act allows legislative bodies to impose requirements on themselves that exceed the minimum standards of the law. In addition, previously, an elected legislative body could impose additional requirements on other bodies (such as committees or commissions) that have a majority membership appointed by the legislative body. SB 707 removes this limiting language. Now, any legislative body may impose greater access requirements on any of its appointed legislative bodies, regardless of whether or not the body setting the rules is an *elected* legislative body.

5. **Formatting & Minor Updates (Section 54954.2)**

This statute was updated by SB 707, but it is not a substantive change. Section 54954.2 describes regular meeting agenda requirements, including item descriptions, the deadline to post, and the time and location of the meeting. None of the legal requirements were changed; only formatting. Specifically, instead of a paragraph description, this statute now includes subsections that delineate the requirements.

6. **Committee Exception Revisions (Section 54954.3)**

In some limited circumstances, a legislative body is not required to allow public comment for an agenda item that has already been considered by one of its committees. SB 707 made several non-substantive revisions to this statute, but it also made some significant substantive changes.

Public comment is not required where the agenda item has already been considered by a committee that is composed exclusively of members of the legislative body, and consideration of that item happened at a public meeting where public comment was considered. SB 707 did not change this rule.

However, SB 707 did create additional exceptions to this rule. Prior to SB 707, members of the public were still entitled to provide public comment if the agenda item had substantially changed since the committee considered it. SB 707 added two new exceptions:

> (1) Public comment is still required if, when considering the agenda item at the committee meeting, a quorum of the committee members did not participate from a singular physical location that was clearly identified on the agenda, open to the public, and located within the legislative body's jurisdiction.
>
> (2) Public comment is still required if the committee is one that primarily considers topics such as elections, budgets, police oversight, privacy, removing or limiting access to public library materials, or taxes and spending. However, if this committee is prohibited by an agency law or rule from setting an overall time limit on public comment, then the main legislative body may dispense with public comment and this exception does not apply.

7. **Special Meeting Updates (Section 54956)**

The Brown Act requires members of a legislative body to receive notice of a special board meeting, but notice may be waived. SB 707 was changed to allow members to waive notice of a special meeting by telephone or e-mail. Prior to SB 707, the Brown Act only allowed waiver by telegram. This update reflects advances in methods of communication.

SB 707 also updated requirements for posting special meeting agendas for the general public. Previously, only certain types of legislative bodies were required to post special meeting agendas online. SB 707 removed these requirements; therefore, any agency that has a website must post *all* legislative bodies' special meeting agendas online.

Finally, SB 707 provides that a special meeting may not be held regarding the salary or benefits of the legislative body. Previously, this provision only applied to local agency executives. Now, any salary or benefit items relating to the legislative body or a local agency executive must take place at a regular meeting.

8. **Emergency Meeting Updates (Section 54956.5)**

The Brown Act allows legislative bodies to hold emergency meetings under extremely limited circumstances without complying with typical notice requirements. This statute previously had different requirements for posting notice of an emergency meeting for school board bodies and other legislative bodies. SB 707 updated this section to require the same notice and posting requirements for any legislative body to hold an emergency meeting.

9. **Closed Sessions Minor Updates (Section 54957.6)**

This statute was updated by SB 707, but not substantively changed. Section 54957.6 authorizes closed session discussions for labor negotiations on compensation, benefits, and other authorized items. None of the legal requirements of this section changed; only minor formatting changes.

10. **Disruption/Removal; Minor Changes (Section 54957.9)**

This statute was updated by SB 707, but not substantively changed. A single word was changed. None of the legal requirements of the Brown Act were changed due to this revision.

11. **Disruption/Removal; Minor Changes (Section 54957.95)**

The Brown Act allows for a member of the public to be removed from a public meeting if the attendee is engaging in behavior that is actually disruptive or otherwise impedes the orderly conduct of the meeting. SB 707 updated this section to specifically allow removal from a public meeting due to disruptions made by any attendees who are attending via videoconference or teleconference. Prior to the implementation of SB 707, teleconference meetings were not specifically mentioned, and it was therefore unclear whether virtual attendees could be removed from public meetings. With this update, the Legislature has made it clear that the Brown Act procedure for warning and removal due to disruptive behaviors applies to virtual meetings as well as in-person meetings.

12. **Disruption/Removal; Virtual attendees (Section 54957.96)**

Section 54957.96 is a completely new section of the Brown Act. This code section specifically authorizes a legislative body or its presiding officer to remove or limit the participation of any person who disrupts a public meeting through their behavior on a telephonic service or audiovisual platform. This section also defines "two-way audiovisual platform" (e.g. Zoom or Teams) and "two-way telephonic service" (e.g. dial-in meeting not requiring internet access).

As noted above, if you have any questions about SB 707 or this summary, please contact your city attorney.

Land Use and CEQA Litigation Update

Annual Conference 2026

Land Use & CEQA Litigation Update

Cases Reported May 13, 2026, through August 17, 2026

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Thursday, September 24, 2026
8:30 – 10:00 Legal Issues Session

League of California Cities
2026 Annual Conference and Expo

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I. CEQA Case Summaries

A. *The Protect Our Communities Foundation v. City of San Diego* (2026) 121 Cal.App.5th 449

Holding

The Fourth District Court of Appeal held that the City of San Diego ("City") properly concluded that CEQA did not apply to the award of gas and electric franchises to San Diego Gas & Electric Company ("SDG&E") because the franchise agreements did not constitute a "project" under CEQA.

Facts

After the expiration of the previous franchise agreements, the City approved new gas and electric franchise agreements with SDG&E. The City concluded that awarding the franchises to SDG&E constituted "a fiscal and administrative activity of a government that will not result in a direct or indirect physical change in the environment," and thus "is not subject to CEQA pursuant to CEQA Guidelines Section 15060(c)(3)" because it is not a "project" as defined in CEQA Guidelines section 15378.

The Protect Our Communities Foundation ("POCF") filed a verified petition for writ of mandate challenging the City's decision, and claiming, among others, that the City applied an improper legal standard when it determined the approval of the franchise agreements were not subject to CEQA. The trial court concluded that the ordinances constituted a project for purposes of CEQA, because they allowed SDG&E to construct, maintain, and use pipes, poles, wires and appurtenances to distribute gas and electricity, and therefore it was reasonably foreseeable that the ordinances could result in new construction causing environmental change. Nonetheless, the trial court concluded the ordinances were categorically exempt from environmental review under the "existing facilities" exemption (CEQA Guidelines § 15301), and denied the petition as to the CEQA cause of action.

POCF appealed, arguing that the trial court erred by rejecting POCF's claim that the City was required to conduct further environmental review under CEQA.

Claims Raised

POCF argues that the City's adoption of the ordinances and related agreements qualifies as a "project" under CEQA. According to POCF, these franchise approvals represent a binding long-term commitment that limits consideration of environmentally superior alternatives and creates a causal link sufficient to trigger CEQA review.

Analysis

POCF argued that the City's adoption of the franchise agreements qualifies as a "project" under CEQA, because they represent a binding long-term commitment that limits consideration of environmentally superior alternatives and creates a causal link sufficient to trigger CEQA review. The Court disagreed.

Under CEQA Guidelines section 15378, a CEQA project does not include “the creation of government funding mechanisms or other government fiscal activities, which do not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment.”

The Court noted that the franchise approvals maintain the status quo, do not compel or induce new construction, and lack the causal connection necessary to trigger CEQA review. The franchise approvals do not authorize new residential or commercial development, establish new land uses, or encourage population growth. They do not facilitate the creation of new businesses, nor do they change land use patterns or service areas. The franchise approvals merely establish a funding and administrative structure, without committing the City or SDG&E to any particular development or construction.

Language in the ordinances allowing SDG&E to “construct” and “maintain” infrastructure does not mean construction is imminent or environmentally significant, nor does it establish the existence of a project under CEQA because it contains no commitment to undertake any specific work. It only authorizes SDG&E to continue lawfully using City streets for its infrastructure in the same manner it has historically done. The Court reasoned that requiring CEQA in this situation, based on undefined, speculative scenarios, would serve no practical purpose and would contravene CEQA’s rule that it applies only when an activity may cause a reasonably foreseeable physical change in the environment.

The Court ruled that the City correctly concluded that CEQA did not apply to the ordinances, and therefore the trial court did not err in denying the CEQA cause of action. The Court did not reach the analysis as to potential exemptions, because in its independent review, it concluded that the approval of the franchise agreements did not constitute a project for CEQA purposes.

B. Baker v. Bay Area Toll Authority (2026) 120 Cal.App.5th 1254

Holding

The First District Court of Appeal held that Petitioner's second CEQA challenge to the Bay Lights 360 Bay Bridge illumination project was time-barred due to the preclusive effect of a prior unappealed judgment on demurrer dismissing that prior action on statute of limitations grounds.

Facts

The Bay Lights art installation is a monumental light sculpture and generative art installation on the western span of the San Francisco-Oakland Bay Bridge that began in 2012 and entailed the installation and operation of LED lights on the exterior of the Bay Bridge's suspension cables. The installation's LEDs are controlled via a computer and display changing patterns that were not meant to repeat. Initially intended as a temporary installation, which ended on March 5, 2015, the project was re-installed as a longstanding feature of the Bay Bridge with permanent fixtures that were re-lit in January 2016. After an extended run, the lights were turned off on March 5, 2023. The Bay Area Toll Authority ("BATA") approved those earlier versions of the project and declared all to be CEQA-exempt and filed Notices of Exemption ("NOEs") for those project approvals.

In August 2023, BATA approved and filed an NOE for Bay Lights 360, which proposed to energize the original Bay Lights art installation and add interior lights on the Bay Bridge's suspension cables facing drivers on the bridge, approximately doubling the total number of LEDs. No timely CEQA challenge to BATA's approval of Bay Lights 360 was filed. In October 2024, Caltrans issued an encroachment permit conditionally approving BATA's Bay Lights 360 installation (with conditions requiring a comprehensive safety study and test of prior to activation). In December 2024, Mark Baker, who is the President of the Soft Lights Foundation and advocates for the protection of individuals who are adversely impacted by LED light, filed his first CEQA action challenging BATA's approval of Bay Lights 360 against BATA, Caltrans and other agencies. BATA demurred and the trial court found that action (*Baker I*) was barred by both CEQA's 35-day (triggered by the August 2023 NOE) and 180-day statute of limitations (running from BATA's decision to approve or carry out the Bay Lights 360 project, which the court found occurred not later than early 2023). Judgement was entered in May 2025.

Instead of appealing the judgement in *Baker I*, Baker filed his second CEQA action (*Baker II*) asserting a single CEQA claim against BATA focusing on Caltrans' encroachment permit. In *Baker II*, Baker alleged that the light-testing and study required by the Caltrans permit amounted to a new, stand-alone project under CEQA that wasn't acknowledged in the 2023 NOE and required preparation of a full Environmental Impact Report. BATA once again demurred, claiming that Caltrans' permit did not approve a new project or restart the CEQA statute of limitations to challenge approval of Bay Lights 360. In essence, BATA asserted that the CEQA claim in *Baker II* remained time-barred and Baker couldn't relitigate that issue from the trial court's prior adverse ruling against him on it in *Baker I*. The trial court agreed and granted BATA's demurrer without leave to amend, finding that its prior determinations regarding when the project was approved and when the statute of limitations to challenge the approval expired were preclusive because Baker failed to appeal those adverse rulings.

Analysis

The First District Court of Appeal affirmed the trial court's judgment dismissing the petition in *Baker II* without leave to amend. The published portion of the Court's opinion is centered on its issue preclusion analysis supporting affirmance of the trial court's denial of leave to amend and focuses on the evolution of the issue preclusion doctrine as well as recent differing judicial decisions concerning its requirements. Quoting both *Samara v. Matar* (2018) 5 Cal.5th 322, 327 and *People v. Curiel* (2023) 15 Cal.5th 433, 451-452, the Court first explained how both decisions described issue preclusion as having the same four requirements – (1) final adjudication (2) of an identical issue (3) actually litigated necessarily decided in the first suit and (4) asserted against one who was a party in the first suit or one in privity with that party – but that the *People v. Curiel* decision added that the final adjudication requirement had to be a final adjudication on the merits.

Noting that nobody disputed that the trial court's *Baker I* ruling became final after Baker failed to appeal and that Baker is the party against whom the issues were decided in both suits, and after easily concluding the trial court in *Baker I* rejected the very same statute of limitations arguments that Baker raised in *Baker* II (thus meeting the "identical issue" requirement), the Court honed in on the differing judicial treatment of the final adjudication requirement. Without deciding whether the final adjudication requirement has to be on the merits or not, the Court found that even if final adjudication on the merits was required it was satisfied here because relevant holdings require issue preclusion to be applied to dispositive statute of limitations issues decided on demurrer when the losing plaintiff seeks to relitigate the exact same arguments concerning the statute of limitations that were resolved against him in the first action. The Court bolstered its decision by holding that public policies underlying issue preclusion/collateral estoppel, preservation of the integrity of the judicial system, judicial economy, and the protection of litigants against vexatious litigation all also supported applying the issue preclusion doctrine here.

C. Sunflower Alliance v. Dept. of Conservation (2026) 20 Cal.5th 22

Holdings

The California Supreme Court held that:

(1) a strict, use-based inquiry shall be used to determine whether a project falls under CEQA's class 1 categorical exemption for existing facilities;

(2) the plain language of the exemption's phrase "negligible or no expansion of existing or former use" refers to an expansion or change in the nature or degree of a structure or facility's *use*, not to a project's risk of environmental harm or lack thereof.

Facts

In 2020, Reabold California LLC filed an application with the Department of Conservation's Division of Geologic Energy Management "(CalGEM") to convert a dormant, inactive oil well in the Brentwood Oil Field in Contra Costa County into an active Class II treated wastewater injection well. The oil well formerly pumped oil and water from an aquifer from 1963-1983 and was then plugged. In 1982, the EPA exempted the aquifer from the Safe Drinking Water Act, making it eligible for Class II injection wells. After the proposed conversion, the oil well would pump excess water underground back into the aquifer, eliminating nearly a dozen weekly heavy duty truck trips to a disposal site 32 miles away to dispose of the produced water. Under the proposed project, only minor alterations would occur to the actual well itself and the injected wastewater would go into a geographically confined aquifer located 4,000 feet underground and would not adversely affect any of the 22 water supply wells in the area, none of which are over 500 feet deep. Three regulatory agencies – CalGEM, the State Water Resources Control Board, and the Regional Water Quality Control Board—reviewed Reabold's application. After resolving the agencies concerns, CalGEM approved the project and found the project exempt from CEQA under the Class 1 categorical exemption found in CEQA Guidelines section 15301 as a "minor alteration" of an existing facility involving "negligible or no expansion" of the well's former use.

Claims Raised

Sunflower Alliance, a grassroots, volunteer-run environmental justice coalition, filed a petition for writ of mandate to challenge CalGEM's approval of the project, asserting that the project did not qualify for the class 1 existing facilities exemption because the proposed well conversion was a major change in use, not a negligible one. The lower courts split heavily on the issue: the trial court ruled in favor of Sunflower Alliance, while the Court of Appeal reversed and ruled in favor of the state and the oil company, focusing on environmental risk as opposed to the change in operation and concluding that the project fell under the exemption because its environmental risks were negligible.

Analysis

The Supreme Court disagreed with the Court of Appeal's analysis for three primary reasons. First, the Court, noted that the exemption's plain language neither expressly references nor even contemplates the risk of environmental harm. Second, in addition to its use of that plain language rationale, the Court pointed to the fact that in Public Resources Code section 21084 the Legislature specifically empowered the Secretary of California's Natural Resources Agency, not lead agencies or courts, to identify categories of exempt projects based on their unlikeliness to cause significant environmental effects. Third, the Court examined CEQA's three-step process – (1) is the proposed activity a project subject to CEQA, if so, (2) is the project exempt from CEQA, and if not exempt (3) conduct an Initial Study to assess the project's potential environmental impacts – and concluded that CEQA does not contemplate such environmental impact review in either the first or second step of that process. Accordingly, the Court unanimously held that the exemption's phrase "negligible or no expansion of existing or former use" refers not to the risk of environmental harm but rather to "an expansion or change in the nature or degree of a structure or facility's use." The Court remanded the case back to the Court of Appeal for further consideration and analysis consistent with the Court's decision.

Practice Tips

If it isn't clear whether a project's change of use is negligible but there is evidence that the proposed project will not result in any significant adverse environmental impacts, consider relying on both the class 1 existing facilities categorical exemption as well as the common sense exemption, which *does* contemplate the risk of environmental harm by covering projects for which it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

D. *Russian Riverkeeper v. County of Sonoma* (2026) 122 Cal.App.5th 382

Holdings

The First District Court of Appeal held that:

(1) The Public Trust Doctrine and its obligation to consider public trust impacts on navigable waters applies to all California counties that issue groundwater well permits and no express legislative delegation of those Public Trust duties is required.

(2) Courts apply the highly deferential "arbitrary, capricious, or entirely lacking in evidentiary support" standard of judicial review to quasi-legislative well ordinances and applying that standard here Petitioners failed to meet their burden of showing the County's public trust analysis was entirely lacking in evidentiary support.

(3) Sonoma County's proposed amendments to its groundwater well ordinance did not qualify for the Class 7 or Class 8 categorical exemptions because those exemptions only cover actions to assure the maintenance, restoration or enhancement of the environment/a natural resource and while the proposed amendments may indirectly benefit some natural resources they also relax some regulations and 95% of well permit applications would remain subject to ministerial review and the remaining 5% could, even if denied, be approved on appeal to the County's Board based on overriding considerations

(4) Sonoma County's proposed amendments to its groundwater well ordinance also did not qualify under CEQA's common sense exemption because the County's intention that the amended ordinance would result in fewer wells or decrease groundwater pumping was irrelevant and the County's assumption that it would reduce wells and groundwater pumping was not supported by substantial evidence and thus it could not be said with certainty that the amendments have no possibility of causing a significant environmental impact.

Facts

The Russian River, which runs through Sonoma County, is a navigable waterway protected by the public trust doctrine under California law. It also serves as critical habitat for several threatened and endangered fish species, including the Central California Coast Coho salmon, the California Coastal Chinook salmon, and the Central California Coast steelhead trout (collectively, salmonids). Groundwater extraction poses a recognized threat to these species because salmonids require sufficient water depths in rivers to reach spawning areas, and excessive groundwater pumping can reduce those depths. Sonoma County is one of the most well-dependent counties in California, relying on more than 45,000 water wells — the most per capita of any county in the state — to supply water for agricultural, residential, commercial, and industrial users in unincorporated areas. Between 2017 and 2022, the County issued an average of 320 groundwater well permits per year.

The project at issue in this case involved a proposed amendment to Chapter 25B of the Sonoma County Code, the local ordinance governing groundwater well permit approvals. Prior to the proposed amendment all groundwater well permit approvals were ministerial and thus not subject to CEQA. The impetus for the amendments was a 2018 Court of Appeal decision, *Environmental Law Foundation v. State Water Resources Control Board* (2018) 26 Cal. App. 5th 844, in which the Third District held that counties, as subdivisions of the state, share the state's responsibility for administering the public trust. That decision specifically held that the public trust doctrine imposed a fiduciary duty on the County of Siskiyou to consider public trust interests when permitting groundwater wells that could impact navigable waterways. Following that precedent, the County began a process to amend Chapter 25B to address its own public trust obligations. The County's Board of Supervisors ("Board") held its first hearing on August 9, 2022, at which County staff presented on the public trust doctrine and the proposed amendments, and members of the public — including the petitioners — offered comments. The Board then directed staff to coordinate with relevant governmental agencies and conduct public outreach. Working groups were convened and made recommendations, including establishing a Public Trust Review Area (PTRA) within which wells would be subject to discretionary review unless they fell into defined ministerial well classes, and imposing water conservation and metering requirements on nearly all wells in the PTRA. The Board adopted the amended ordinance on April 18, 2023. the Board did not conduct an independent environmental review under CEQA, concluding instead that three exemptions applied: the Class 7 categorical exemption (actions to assure maintenance, restoration, or enhancement of a natural resource), the Class 8 categorical exemption (actions to assure maintenance, restoration, enhancement, or protection of the environment), and the common sense exemption (where it can be seen with certainty that there is no possibility the activity may have a significant effect on the environment).

Petitioners filed their writ petition challenging the amended ordinance on both public trust doctrine and CEQA grounds in May 2023. The trial court found both claims were meritorious and granted the petition in full in August 2024, entering an October 30, 2024 judgment invalidating the ordinance amendments and rescinding the County's claimed CEQA exemptions. Sonoma County timely appealed.

Analysis

The Court first addressed Sonoma County's argument that it bore no public trust duties because the state holds sole authority to administer the public trust and no legislative delegation of that duty to the County had occurred. The court rejected this argument and reaffirmed the holding of the Third District Court of Appeal's decision in *Environmental Law Foundation*, which had established that a county, as a subdivision of the state, shares responsibility for administering the public trust and may not approve activities destructive to public trust resources without giving due regard to their preservation. Although *Environmental Law Foundation* was decided by a different appellate district and was therefore not binding, the court stated it saw no good reason to depart from that decision and expressly followed it. The court thus held that Sonoma County shares responsibility for administering the public trust with the state when issuing groundwater well permits that may affect the Russian River, a navigable waterway protected by the public trust doctrine.

The Court then clarified the applicable standard of review for public trust challenges to county land use and permitting decisions, holding that the petitioner bears the burden of establishing that the county's decision was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. The court emphasized that this "entirely lacking" standard is more deferential to agency decisionmaking than the substantial evidence standard—meaning a petitioner faces an even higher bar to overturn a county's public trust analysis than would be required under ordinary substantial evidence review. Applying the deferential standard, the court held that the petitioners failed to demonstrate that Sonoma County's amendments to Chapter 25B were arbitrary, capricious, or entirely lacking in evidentiary support. The court found that the record demonstrated the County gathered information, engaged the public, and subsequently balanced conflicting policy concerns to fashion a compromise addressing the practical realities of groundwater well permitting. The court also found that the County explicitly considered cumulative impacts on public trust resources—including the potential for groundwater extraction to deplete streamflows critical to threatened and endangered salmonid species—and that petitioners failed to overcome the presumption of validity accorded to the County's legislative action. Accordingly, the Court of Appeal reversed the trial court's judgement in favor of Petitioners on their public trust claim.

Turning next to address the CEQA exemption issues, the Court began by reaffirming the established rule that when a public agency invokes a categorical exemption from CEQA review, the burden falls on the agency—not the challenger—to demonstrate with substantial evidence that the exemption applies. Relying on *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com*. (2007) 41 Cal. 4th 372, and *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal. App. 4th 694, the Court held that Sonoma County bore the burden to show with substantial evidence that the amended ordinance would restore or enhance the environment, and that the CEQA challenger bore no burden to show the project would degrade the environment or deplete a natural resource. Concerning the applicability of the Class 7 and Class 8 categorical exemptions, the Court determined both as a matter of law and based on the administrative record that that Sonoma County's amendments to the groundwater well ordinance did not fall under either exemption. Class 7 covers actions by regulatory agencies to assure the maintenance, restoration, or enhancement of a natural resource, and Class 8 covers actions to assure the maintenance, restoration, enhancement, or protection of the environment. The court found that the ordinance amendments—which relaxed certain permitting requirements and lifted a moratorium on new well permits—could not reasonably be characterized as actions to assure the maintenance, restoration, or enhancement of the environment. The court further held that even assuming the exemptions were facially applicable, the record lacked substantial evidence that the amendments would in fact restore or enhance the environment, particularly given that the administrative record contained conflicting information regarding the actual environmental impacts, failed to account for potential adverse secondary effects, or lacked concrete baseline data to prove a net environmental benefit.

Finally, the Court also rejected the County's invocation of the common sense exemption, which only applies when it can be seen with certainty that there is no possibility the activity in question may have a significant effect on the environment. The court held that the County offered no substantial evidence in support of its assumption that the amendments would result in fewer wells or decreased water use/groundwater pumping. Accordingly, because there still was the potential for the amended ordinance to increase groundwater extraction affecting the Russian River and its salmonid habitat, it could not be said with certainty that the amendments had no possibility of causing a significant environmental effect.

II. Land Use Case Summaries

E. Dummer v. City and County of San Francisco (2026) 120 Cal.App.5th 1009

Holding

A municipal reservoir owner had no ministerial duty to immediately open reservoir or seek fishing permit where fishing access required discretionary regulatory planning.

Facts

Defendants are the City and County of San Francisco and the San Francisco Public Utilities Commission. The City is the owner of the Calaveras Reservoir, which contains various fish species and provides drinking water to 2.7 million residents across several Bay Area counties, and is subject to the Commission's Alameda Watershed Management Plan. The plan's purpose is to protect water quality and manage the watershed; the plan currently prohibits public access and fishing at the Calaveras Reservoir.

Plaintiff Timothy Dummer is a fisherman who has long sought access to fish at the Calaveras Reservoir. In an earlier lawsuit brought by Dummer (*Dummer v. San Francisco Public Utilities Com.* (A160789, June 15, 2021) [nonpub. opn.]), the court found that the City had a present ministerial duty to determine "whether fishing in the reservoir is something that can be accomplished without affecting the purity of the water" provided to users, but it emphasized the City had no other ministerial duties to perform at that point. The City complied with the order by determining that fishing could occur without affecting the purity and safety of the water, subject to CEQA review and the analysis of the State's Office of Drinking Water. The City authorized its General Manager "to develop the terms and conditions of a fishing program, obtain the City Planning Department's review of that program under CEQA; request an amendment to the drinking water permit from the State's Office of Drinking Water; and present to [the City] proposed amendments to the 2000 Alameda Watershed Management Plan to allow limited public shoreline fishing at Calaveras Reservoir." The City started planning for a fishing program at the reservoir.

Upon learning the Calaveras Reservoir would not immediately open for fishing while the City considered the necessity and parameters of a fishing program, Dummer filed a petition seeking to compel the City to: (1) obtain the requisite water supply permit from SWRCB pursuant to Health and Safety Code section 117045; and (2) provide public access for fishing during open season.

Claims Raised

The question presented is whether plaintiff Dummer is entitled to a writ of mandate compelling the public entity defendants to obtain an amended water supply permit and open the Calaveras Reservoir—immediately and in its natural state—to public fishing. Dummer contends defendants have a ministerial duty to act.

Health & Safety Code section 117045 provides that, before opening a reservoir to public fishing, a public owner "shall determine that the public fishing will not affect the purity and safety" of the reservoir's water and "shall obtain from [the State Water Board] a valid water supply permit setting forth the terms and conditions upon which public fishing may be conducted." Dummer contends the State Water Board—not the public owner of a reservoir—is the body responsible for determining the terms and conditions of a water supply permit. Dummer claims that once the City determined public fishing could occur in the Calaveras Reservoir without affecting the purity and safety of its water, the City had a ministerial duty to immediately obtain an amended water supply permit from the State Water Board and open the reservoir, in its natural condition, to fishing.

Analysis

The Court disagreed with Dummer. By its terms, Health and Safety Code section 117045 tasks the State Water Board with making the ultimate determination of the terms and conditions to be included in a water supply permit. However, the statute does not operate to deprive a public owner of authority to evaluate—and discretion to decide—what terms and conditions the owner deems appropriate to propose in its application for such a permit.

The City did not conclude public fishing could safely and immediately occur at the Calaveras Reservoir without further steps; the City made a determination that fishing "can occur" at the reservoir without affecting water purity and safety, "subject to the results of any CEQA review and the analysis of [the State Water Board]" pursuant to "terms to be set by the [Commission's] General Manager."

Moreover, the relevant Health and Safety Code provisions contain no language preempting other potentially applicable statutory schemes, such as CEQA. CEQA review is necessary where, as here, a watershed management plan requires amendment to allow for a new recreational activity within the watershed.

Dummer also relies on other laws establishing a public right to fish. However, the public right to fish "must yield in appropriate factual situations to the reasonable exercise of the state's inherent police power to protect public safety and welfare," which reasonably encompasses not only our state's interest in protecting water purity but also its strong public policy of protecting the environment.

The Court concluded that Dummer did not demonstrate Defendants' failure to perform a ministerial duty and affirmed the trial court's judgment.

Practice Tips

Health & Safety Code section 117045 recognizes the authority and discretion of the City to evaluate and determine the terms and conditions it deems necessary to control public fishing access at a reservoir, subject to approval by the State Water Board.

F. *AquAlliance v. Vina Groundwater Sustainability Agency* (2026) 122 Cal.App.5th 118

Holding

Plaintiff's validation action under SGMA was properly dismissed under the primary jurisdiction doctrine, as it presented issues that completely overlapped with determinations the Legislature unambiguously reserved for the Department of Water Resources.

Facts

The Sustainable Groundwater Management Act ("SGMA") requires certain local groundwater sustainability agencies to develop groundwater sustainability plans for their basins. After adoption, the groundwater sustainability agency must submit the plan to the Department of Water Resources ("DWR"), which has two years to conduct an initial evaluation of the plan, and then has an ongoing obligation to periodically review the plan to ensure it conforms with plan content requirements and "is likely to achieve the sustainability goal for the basin." SGMA also allows a groundwater sustainability agency to file a validation action to determine the validity of the plan.

Plaintiffs AquAlliance, California Water Impact Network, and California Sportfishing Protection Alliance filed a validation action under SGMA challenging the groundwater sustainability plan adopted by defendants Vina Groundwater Sustainability Agency and Rock Creek Reclamation District, asserting the plan "fails to achieve sustainable groundwater management." DWR "approved" the plan while the litigation was pending, and the trial court granted defendants' motion to dismiss plaintiffs' reverse validation action on the ground that DWR's approval mooted the action.

Claims Raised

This case examines the intersection between DWR's evaluation of a groundwater sustainability plan and a judicial validation action. Plaintiffs appealed the trial court's dismissal, arguing SGMA's validation procedures and DWR's review are two separate procedures and SGMA "does not limit the scope of validation claims."

Analysis

The Court affirmed the trial court's decision, concluding the trial court did not abuse its discretion in effectively applying the primary jurisdiction doctrine. This doctrine permits trial courts to stay and potentially dismiss actions where there is a "pervasive and self-contained system of administrative procedure" addressing the same issue. SGMA is such a statutory scheme, and plaintiffs' action sought to perform the same evaluation SGMA mandated DWR to perform, which justified the eventual dismissal of plaintiffs' action once DWR completed its evaluation.

G. New Commune DTLA LLC v. City of Redondo Beach (2026) 122 Cal.App.5th 99

Holding

The Housing Accountability Act's "builder's remedy" did not permit affordable housing that bypasses the Coastal Commission's land use approval process, based on the City's findings that: (1) denial was required under the Coastal Act as a matter of State law; and (2) no feasible method existed for the proposed housing to be compliant with the Coastal Act.

Facts

New Commune DTLA, LLC ("Developer") applied to the City of Redondo Beach for permits to develop a 30-unit mixed use condominium project (including six affordable units) in the City's coastal zone. The City's certified LCP designates permitted uses for different coastal zones, and residential uses are neither permitted nor conditionally permitted in the zone applicable to the Project. Developer acknowledged residential uses were not permitted but declared its application must be approved as a "builder's remedy" project under the HAA, since the City did not have a substantially compliant housing element certified by HCD at the time Developer submitted its project for approval.

The City denied the Project, finding that (1) denial was required under the Coastal Act as a matter of State law; and (2) no feasible method existed for the proposed housing to be compliant.

Following the denial of its application, Developer petitioned for writ of mandate, alleging that the "builder's remedy" compelled the City to approve the Project. The trial court denied the petition, finding Developer's proposed project violated the City's LCP, and that the "builder's remedy' could not override coastal land development requirements under the Coastal Act and the City's certified LCP.

Claims Raised

This case raises the question as to what extent must a builder's remedy project comply with the Coastal Act. Developer contends the trial court erred by effectively overriding the HAA in favor of the Coastal Act and offers a proposal for "harmonizing" the two acts.

Analysis

The court declined the Developer's proposal to "harmonize" the Builder's Remedy and the Coastal Act, as this would impose on local governments the duty to determine whether new and Commission-uncertified land uses comply with the Coastal Act.

Instead, the Court looked to the express language of the HAA. Under the HAA, a local agency may only disapprove a housing development project for very low, low-, or moderate-income households (including a builder's remedy project) if it makes one of several specified findings, one of which is that the denial is required to comply with state or federal law, and there is no feasible method to comply without rendering the development unaffordable to low- and moderate-income households.

Here, the Court noted that the City is unable to authorize a use other than those uses designated in the LCP without first receiving certification by the Commission, such that the approval would violate the Coastal Act. The Court distinguished this from the circumstances in previous cases, where the courts upheld local CDP approvals that authorized projects in technical nonconformity with specific development *standards* because those nonconformities were overall compliant with LCP policies and the land *uses* at issue were permitted. Additionally, since the Developer did not apply for an LCP amendment to allow residential uses, there was no feasible method for the Project to comply with the Coastal Act. Accordingly, the City's denial findings, that (1) denial was required under the Coastal Act as a matter of State law and (2) no feasible method existed for the proposed housing to be compliant, were proper.

Practice Tips

Rather than merely relying on the Coastal Act to disapprove a builder's remedy project, this opinion reinforces that local agencies must make the denial findings required by the HAA, supported by a preponderance of the evidence, in order to deny a Builder's Remedy project in the coastal zone.

LEAGUE OF CALIFORNIA CITIES

Inspections, Abatements and the Fourth Amendment

Annual Conference 2026

League of California Cities

Inspections, Abatements & the Fourth Amendment for Code Enforcement

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Community Problems & Local Laws

The California Constitution grants cities and counties the power to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws."[1] When properties are neglected, they often fall into disrepair, creates nuisances and endanger occupants and neighbors. Junk and trash accumulates around the building, plaster cracks and falls off walls, windows crack, wood rots, and vegetation becomes overgrown or dies. These issues are not only aesthetic; junk, trash, and overgrown or dead vegetation can catch fire and impede firefighters' efforts to control the blaze. Unmaintained or broken plaster, roofing and windows allow water to seep into buildings, causing water damage and dangerous mold. Rotting wood plays host to fungi, mold, and termites. Overgrown vegetation creates an ideal home for rats and insects. Sometimes property owners alter their property without permits. Unpermitted construction is not inspected for safety or code compliance. As a result, it can contain serious issues like faulty wiring or plumbing. When plumbing or wiring is installed incorrectly, it can cause floods, mold, rot, sewage seepage, or fires. These do not only pose a danger to the owner. Many nuisances can spread into neighboring properties, harming those living on them. On a wider scale, substandard housing plagues our State, with over two million Californians living in substandard housing, according to U.S. Census Bureau data.[2] Finally, local code violations resulting in nuisances, blight and substandard conditions result in visible signs of disorder, which in turn, signal that criminal behavior is tolerated, contributing, along with other factors, to increased crime.

Other times, it is the *use* of the property that violates the law. Some businesses, such as illegal gambling, "massage" parlors, slums, and crime dens pose dangers to the surrounding community. They increase crime rates in the area and invite more. Other times, the business is a sidewalk vendor operating without a permit, possibly involving hazardous food without a health inspector to verify practices. And yet other businesses may be operating without proper permits, business licenses or even in the incorrect zone, negatively impacting both neighboring communities and the environment, such as an illegal concrete batch plant operating in the flood plain or in a residential district. Municipalities create codes to protect the community, and then are empowered to cause compliance with those codes.

The Role of Code Enforcement & Inspections

When code violations occur, Code enforcement steps in. Code enforcement has several tools in its belt it can use to address the variety of nuisances, substandard conditions, blight, crimes and other problems facing communities. These tools range from administrative fines, to red tags (orders to vacate), civil lawsuits for abatement or injunctions, appointment of a receiver to remediate properties or stop illegal business practices, criminal enforcement and a variety of notices and other remedies., or damages; a criminal proceeding; or administrative abatement. With these remedies available, code enforcement is able to protect and improve their communities. However, enforcement first requires inspections to confirm the existence, nature and scope of code violations. And, in turn, these inspections very often will trigger Fourth Amendment protections under the United States Constitution. When cities comply with the Fourth Amendment while inspecting and otherwise obtaining evidence of violations, they will almost always successfully obtain compliance. However, the contrary is also true: when they violate constitutional protections, cities not only risk losing their case and allowing potentially very dangerous violations to continue, they also face potential liability. As such, cities should focus on *how* inspections are conducted and evidence is obtained. Compliance with the Fourth Amendment is always possible – whether an exception complies or an inspection warrant is obtained – and thus, never should be an obstacle or fear for cities that prevents them from protecting their communities.

The Fourth Amendment

> *"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."*

One of the driving forces of the American Revolution against the British monarchy was the opposition to British officers performing unrestrained searches of people's homes in search of evidence of crimes.[3] Officers of the King of England used their power to raid homes of those who opposed the monarchy.[4] The writers of the Bill of Rights were likely motivated by protecting the American People from such searches when they penned the Fourth Amendment.[5] Since its signing, Courts have declared that "at the very core [of the Fourth Amendment] stands the right of a man to retreat into his own home and there be free from unreasonable government intrusion."[6]

A search is when law enforcement examines a person's home, vehicle, or business in search of evidence of a crime.[7] A seizure occurs when law enforcement takes possession of physical evidence during the search.[8] Couts have also held that an arrest is a seizure under the Fourth Amendment as it is the act seizing a person.[9]

The Fourth Amendment is enforced by the Exclusionary Rule. Under the Exclusionary Rule, evidence is generally excluded when it's obtained in a search or seizure prohibited by the Fourth Amendment.[10] This is not a constitutional right, but a remedy created to deter the government from utilizing unreasonable searches and seizures.[11] However, evidence obtained under an unreasonable search and seizure may still be admissible if the government agent reasonably believed the search or seizure was proper.[12]

The Fourth Amendment Applies to Code Enforcement

In order to verify the violation of a code or to remedy the violations, the city must be able to conduct inspections and abatements. To do so, it procures an Inspection Warrant, Abatement Warrant, or hybrid Inspection-Abatement Warrant.

The Fourth Amendment has been held to apply to administrative searches. [13] Although the person whose property is being searched is often not suspected of criminal behavior, the person holds a "tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority."[14]

Translating the Fourth Amendment into code enforcement terms, a "search" is an "inspection" and a "seizure" is an abatement.

A search and an inspection are similar to each other: they both involve a government agent examining someone's car, home, or business. In the same way, a seizure and an abatement are similar: during an abatement, code enforcement may remove things from the property such as junk, trash, debris, vegetation, damaged building materials, or inoperable vehicles, or may order a property vacated or cause its demolition.

Despite the general similarities of searches and inspections or seizures and abatements, courts recognize differences between criminal warrants and the inspections warrants used by code enforcement.

First, the requirement for cause differs between a warrant based on criminal charges and a warrant for code enforcement. Whereas a search or seizure requires probable cause, an inspection or abatement requires reasonable cause, otherwise known as good cause or reason to believe. To determine reasonable cause, Courts weigh the need for inspection with the reasonable goals of code enforcement.[15] Code enforcement's power to inspect areas for code violations "is of indispensable importance to the maintenance of community health; a power that would be greatly hobbled by the blanket requirement of the safeguards necessary for a search of evidence of criminal acts."[16] In other words, the standard is different for inspection warrants because they seek different evidence, for a different purpose with different potential consequences. It can be said that the reasonable cause for an inspection warrant is a lower standard than that required for a search warrant.

Second, unlike a search warrant, inspection and abatement warrants occur after consent has been sought and refused unless facts justify not seeking consent.[17] Unlike criminal searches, routine property inspections often do not *need* to occur at a particular time or on a particular day.[18] Without some sort of good cause, pursuant the Fourth Amendment, warrants should not be sought unless or until consent is refused.[19] Exceptions do apply.

Despite the differences between typical search and seizures and inspections and abatements, code enforcement officials should keep the Fourth Amendment and its rules and exceptions in mind. The rules and exceptions inform officials on when a warrant is needed pursuant to the Fourth Amendment versus when an inspection or abatement can take place without a warrant.

Basic Rules of the Fourth Amendment

Reasonable Expectation of Privacy

The Fourth Amendment protects people, not places.[20] The Fourth Amendment is only implicated if the invaded area is one in which the person holds a justifiable, reasonable, or legitimate expectation of freedom from government intrusion.[21] This is also known as a reasonable expectation of privacy. The Fourth Amendment protects not just those who own a property, but also those with a possessory interest and those who are legitimately on the premises where the search occurs.[22] In the context of code enforcement, this means that the occupant's reasonable expectation of privacy is what matters, not necessarily that of the owner, unless the place is owner-occupied.

Subjective Standard

The subjective standard asks if that particular person took reasonable precautions to protect their privacy.[23] The Fourth Amendment does not protect something knowingly exposed to the public.[24] One must seek to keep something private for it to be constitutionally protected.[25] In code enforcement, this is often seen by whether there are tall fences, walls, or other structures surrounding an area. If someone makes no effort to protect something from prying eyes, or the area can reasonably be seen by the public, there is likely no subjective expectation of privacy.

Objective Standard

The objective standard for a reasonable expectation of privacy asks whether society recognizes the expectation of privacy as reasonable.[26] This element is determined by court cases and juries. Courts analyze whether an area fulfills the objective standard by considering the intent of the Fourth Amendment, the usage of the area, and general societal understanding that some areas deserve more protection from government invasion than others.[27] For instance, there is no reasonable expectation of privacy in information turned over to third parties.[28] There is also no reasonable expectation of privacy in what are considered "open fields" as long as they do not fall under curtilage.[29] There is also no reasonable expectation of privacy in viewing a property's readily obvious violations from a neighbor's property, i.e. second story window, with their consent (i.e. plain view).

Curtilage

> *"The poorest man may in his cottage bid defiance to all the force of the crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement." -William Pitt (1763)*

Warrantless searches and seizures inside a home are presumptively unreasonable.[30] Curtilage is the area so closely connected to a home that the occupant maintains their reasonable expectation of privacy. To be considered curtilage, the area around the house must be so connected to the home that it is considered "under the home's umbrella."[31] There are four factors to determine if an area falls within the curtilage:[32]

1. The area's proximity to the home
2. Whether the area is within the enclosure surrounding a home

3. The nature of the occupant's use of the area, and
4. The steps the occupant takes to protect the area from public view

Not every factor must be fulfilled for an area to be within the home's curtilage.[33] When deciding if an area is within the home's curtilage, consider whether the area is being treated as an extension of the home or simply as property. For example, a small, fenced-in patio next to the house where kids play is more likely to be considered part of the home than a shed used only for storage sitting a hundred feet from the main home. The first is treated like an extension of a living room while the second is treated like a storage facility.

Exceptions to the 4th Amendment

Consent

As with most constitutional rights, the Fourth Amendment right may also be waived through the granting of consent.[34] Consent must be voluntarily given.[35] It cannot be coerced threat or covert force.[36] However, a statement that the city will otherwise seek a warrant if not granted consent is not a threat and does not render the consent invalid.[37] The ultimate question is whether the granting of consent is "an unconstrained choice by its maker."[38] The person consenting does not need to be informed of his right to deny consent, but it is best practice.[39]

The person who holds the Fourth Amendment right is the one with the power to waive it, i.e. the occupant. Even the owner or manager of a property may be unable to consent to a search if the occupant has not consented.[40] Two people with access to an area may have equal right to consent to or refuse a search.[41] However, if multiple occupants are present and any refuses entry, then consent is not granted.[42]

Emergency

In the case of an emergency, there is both a compelling need for action and no time to secure a warrant.[43] There are many such examples in the code enforcement context, but some may include, depending on the facts, unsecured green pools, open buildings, gas leaks, and the proverbial collapsing building. When an emergency exists, government agents who would normally be barred by the Fourth Amendment from entering a protected area can enter that area and conduct inspections and abatements.[44]

Highly Regulated Businesses

Some businesses are so highly regulated and subject to a long history of government oversight that a proprietor could not have a reasonable expectation of privacy over the stock of the business.[45] The Supreme Court has recognized only four industries that lack the expectation of privacy: liquor sales, firearm dealing, mining, and running an automobile junkyard.[46] These types of industries inherently pose a "clear and significant risk to the public welfare" and be subject to a comprehensive scheme of regulation distinguishing them from numerous other industries.[47] The Supreme Court is reluctant to expand this to include other categories, because it sees the highly regulated business standard as a very narrow exception .[48] If a business falls under one of those four industries, it can be valuable to know about the exceptions since they allow a government to avoid the time and costs of securing a warrant to inspect property.

Plain View Doctrine

The plain view doctrine allows the government's agents to perform a search or seizure of items in plain view if the agents are there legally.[49] However, a minor trespass may not cause evidence to be excluded under the Fourth Amendment.[50] Although a warrant is needed to enter a home or its curtilage, an inspector may observe areas within a home's curtilage from a public place.[51] For instance, if a government agent is walking along the sidewalk or up a path to the front door, somewhere visitors are expected to go, they can keep a lookout for violations of law.[52] It is also generally permissible to view violations of law from a neighbor's backyard with that neighbor's consent.[53] Even aerial surveillance is permitted under the plain view doctrine.[54] What the government agent views in these cases can then be used to procure a warrant.[55]

This also applies to the seizure of items when a government agent is legally in a house. For instance, if a government agent gains access to a home in an emergency, such as a firefighter entering a house to stop a fire, the agent can then seize evidence of arson if it is plain view.[56] In code enforcement, the Plain View Doctrine is often implicated when an inspector can see violations of law inside a home or an enclosed backyard from a legal vantage point. In that case, the violations of law are within plain view and can accompany an application for a warrant.

When No Exception Applies

"[I]n the absence of consent or exigent circumstances, government officials engaged in the abatement of a public nuisance must have a warrant to enter any private property where such entry would invade a constitutionally protected privacy interest."[57] When no exception applies, code enforcement must follow proper procedure to get a warrant.

The first step is to seek consent to inspect the area of suspected code violations. This can be done by sending a letter to the owner/occupants requesting their full consent to inspect or abate. The letter should also give the owner and occupants a set deadline by which to respond with the granting or refusal of consent.

The second step is to prepare a warrant application. Inspection warrants and abatement warrants follow the same requirements.[58] A warrant must be supported by an affidavit (declaration) including the following[59]:

1. A description of the area to be searched,
2. The purpose of making the inspection,
3. A statement consent was sought and refused or the facts justifying failure to seek consent

An inspection or abatement warrant requires a showing of cause.[60] Cause exists when reasonable legislative or administrative standards for routine or area inspections are satisfied or when there is a reasonable belief there is a violation of law in the area.[61] To show cause, the application for a warrant should include a declaration from a code enforcement official describing the violations previously observed and how they create a reasonable belief there are more violations in areas not easily observed. It is advisable also to include a Memorandum of Points and Authorities outlining the statutes and case law allowing for the issuance of the warrant because some judges have little or no knowledge of the applicable law.

If appropriate under the law, it might also arguments for allowing the warrant to be executed in the absence of the owner or occupant and by forcible entry. Without express authorization from the Court to do so, a warrant cannot be executed in absence of the owner or occupant, and forcible entry may not be used.[62] For a judge to grant permission to do so, the warrant application should show executing the warrant in the absence of the owner or occupant is reasonably necessary based on the purpose of the codes being enforced. For forcible entry, the declaration should assert facts creating a reasonable suspicion of code violations creating an immediate threat to health and safety or show that the city unsuccessfully attempted to serve a prior warrant.[63]

Because judges are extremely busy, and because the warrant should be applicable to the particular case, the application should include a proposed warrant. Most judges will refuse to grant a warrant without one. The proposed warrant should include a description of the area to be searched, who is granted the power to execute the warrant, a time limit in which the warrant must be returned, that the warrant will be executed between 8:00 a.m. and 6:00 p.m., that the warrant may be executed in absence of the owner or occupants, and that forcible entry is authorized. If the application is successful, the judge will simply cross out the word "proposed" and sign the warrant.

The third step is to attend an *ex parte* hearing for the warrant. Notice does not need to be given. There, be prepared to argue each point as to why a warrant should be granted.

Once the judge issues the warrant, unless expressly waived, the fourth step is to give notice and execute the warrant. The owner or occupant generally must be given 24 hours' notice before the execution of the warrant.[64] The warrant will contain instructions on who may execute the warrant, what they may inspect or abate, whether forced entry is permitted and under which circumstances, and by which time the warrant must be returned.

After executing the warrant, the final step is to return it to the judge within the given time period. The warrant will contain a time period for which the warrant is valid, which is no more than 14 days.[65] It may be extended upon a showing that it favors the public interest.[66] After the time period lapses, the warrant is void.[67]

By following all required steps for procuring and executing a warrant, code enforcement can ensure it operates within the confines of the Fourth Amendment and avoid the use of the Exclusionary Rule. This allows code enforcement to use the evidence acquired in the inspections and abatements to pursue legal action such as injunctions, appointment of a receiver, or utilize other abatement tools to protect and improve their communities.

Practice Tips

City attorneys may benefit from some practical tips to avoid Fourth Amendment pitfalls, and make the process of obtaining and executing an inspection warrant more efficient and effective.

First, code enforcement staff will benefit from ongoing training on the Fourth Amendment as it applies to code enforcement duties, as well as inspection warrants. These subjects can seem complicated and intimidating, but are important to understand and implement. For this reason, periodic refreshers and covering specific scenarios code enforcement officers may face are both good practices.

Second, when in doubt, consider an inspection warrant. A warrant provides an extent of legal protection to the city and its employees. While there are several scenarios in which the law clearly provides authority to inspect without a warrant, when an unclear situation arises, a city should consider seeking a warrant.

Third, cities must keep in mind the dangers faced by code enforcement officers during inspections, and implement the necessary safety tools to protect them. Senate Bill 296, now codified into law in Penal Code section 829.7, requires all public agencies in California that employ a code enforcement officer to adopt safety standards that are “appropriate for the code enforcement officers employed in their jurisdiction.” This means the agency must evaluate the risks, threats and hazards associated with the code enforcement officer’s duties, including conducting inspections, and implement appropriate safety standards. The author of this article wrote this law and specifically recommends adopting standards tailored to the particular jurisdiction, as opposed to adopting general standards that are available from several organizations, in order to comply with both the intent and letter of the law that require “appropriate” standards for the particular jurisdiction.

Finally, as the process for obtaining an inspection warrant differs in each county, and often in each courthouse and even department, cities should speak with their local court’s supervising clerk or the presiding judge to determine what process to follow to obtain the warrant. Courts often will be unfamiliar with these types of warrants, so some explanation may be needed. Some courts utilize a duty judge to review inspection warrants, while others may assign a specific judge. In addition, some courts prefer electronic filing, while others require the code enforcement officer to walk it in.

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[1] CA Constitution art XI § 7.
[2] Accessed July 15, 2026. https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00006&s_year=2023&s_tablename=TABLE5&s_bygroup1=1&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1; Matthew R. Silver and Lauren E. Brown: “Is your city complying with California’s substandard housing investigation rules?” Western City Magazine, April 1, 2025. Legal Notes.
[3] *Riley v. California* (2014) 573 U.S. 373, 403.
[4] *Boyd v. United States* (1886) 116 U.S. 616, 625-26.
[5] *Id*. at 630.
[6] *Silverman v U.S.* (1961) 365 U.S. 505, 511.
[7] LII. “Search and Seizure.” LII / Legal Information Institute, Cornell Law School. Accessed July 14, 2026. https://www.law.cornell.edu/wex/search_and_seizure.
[8] Id.
[9] *Payton v. New York* (1980) 445 U.S. 573, 585.
[10] *Mapp v. Ohio* (1961) 367 U.S. 643, 648.
[11] *United States v. Leon* (1984) 468 U.S. 897, 906.
[12] *Id*. at 919.
[13] *Camara v. Municipal Court* (1967) 387 U.S. 523, 530-31.
[14] *Id*.
[15] *Id*. at 535.
[16] *Id*. at 538.
[17] CCP 1822.51.
[18] Camara, *supra* note 13, at 539.
[19] *Id*. at 387-388.
[20] *Katz v. United States* (1967) 389 U.S. 347, 351.
[21] *Smith v. Maryland* (1979) 442 U.S. 735, 740.
[22] *United States v. Jeffers* 342 U.S. 48; *Jones v. United States* 352 U.S. 257.
[23] *Smith, supra* note 21, at 740.
[24] *Katz, supra* note 20, at 351–52.
[25] *Id*.
[26] *Smith*, *supra* note 21, at 740.

[27] *Oliver v. United States* (1984) 466 U.S. 170, 178.
[28] *Smith*, supra note 21, at 743-44.
[29] *Oliver*, *supra* note 27, at 178.
[30] *Payton*, *supra* note 9, at 586.
[31] *United States v. Dunn* (1987) 480 U.S. 294, 301.
[32] *Id*.
[33] *United States v. Depew* (1993) 8 F.3d 1424, 1427.
[34] *Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.
[35] *Id*. at 223.
[36] *Id*. at 228.
[37] *People v Goldberg* (1984) 161 CA3d 170, 188; *People v Ward* (1972) 27 CA3d 218, 224.
[38] *Schneckloth*, *supra* note 34, at 225.
[39] *U.S. v Watson* (1976) 423 US 411, 424-425; *People v James* (1977) 19 C3d 99.
[40] *Chapman v. United States* (1961) 365 U.S. 610, 617.
[41] *Georgia v. Randolph* (2006) 547 U.S. 103, 106.
[42] *Id*. at 108.
[43] *Michigan v. Tyler* (1979) 436 U.S. 499, 509–10.
[44] *Id*.
[45] *Los Angeles v. Patel* (2015) 576 U.S. 409, 424.
[46] *Id*.
[47] *Id*.
[48] *Id*.
[49] *Washington v. Chrisman* (1982) 455 U.S. 1,9.
[50] *People v. Terry* (1969) 70 Cal.2d 410.
[51] *United States v. Perea-Rey* (9th Cir. 2012) 680 F.3d 1179, 1186.
[52] *People v. Chavez* (2008) 161 Cal. App. 4th 1493.
[53] *Dillon v. Superior Ct*. (1972) 7 Cal. 3d 305, 310.
[54] *Florida v. Riley* (1989) 488 U.S. 445, 451-452.
[55] *Steele v. United States* (1925) 267 U.S. 498, 504-05.
[56] *Michigan, supra* note 43, at 509.
[57] *Gleaves v. Waters* (1985) 175 Cal.App. 3d 413, 419.
[58] *Flahive, supra* note 2, at 246; *Gleaves v. Waters* (1985) 175 Cal.App.3d 413, 420.
[59] CCP § 1822.51.
[60] *Id*.
[61] CCP § 1822.52.
[62] CCP § 1822.56.
[63] *Id*.
[64] *Id*.
[65] CCP § 1822.55.
[66] *Id*.
[67] *Id*.

LEAGUE OF CALIFORNIA CITIES

Financial and Policy Tools to Support Affordable Housing

Annual Conference 2026

A Guide to Funding Affordable Housing in California

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Executive Summary

California faces a persistent and well-documented affordable housing crisis. The state needs millions of additional affordable units to meet demand, and the financial burden of developing those units cannot fall on any single source of funding. Fortunately, a wide array of federal, state, and local programs, financing tools, and policy mechanisms exists to help cities and counties fund, incentivize, and deliver affordable housing at scale. Recent developments have reshaped this landscape: since January 2025, several federal programs have been modified, narrowed, or placed under review, while at the state level the Legislature has placed the Veterans and Affordable Housing Bond Act of 2026 (SB 417) before the voters, which—if approved at the November 2026 general election—would authorize $11.25 billion in bonds to fund many of the state programs described in this guide.

This white paper is designed as a practical reference guide for California's city attorneys, city staff and elected officials who play a critical role in directing local housing policy and securing funding. It provides a comprehensive overview of every major federal and state program available to California localities for affordable housing, identifies the legal authority underlying each program, describes eligibility and application processes, and offers practical recommendations for maximizing the use of these tools. While the guide surveys the full funding landscape, it gives particular emphasis to the two strategies most within a city's direct control: (1) forming or participating in a local or regional housing trust fund that provides gap financing through loans and grants, and (2) adopting and refining local policy tools — inclusionary housing programs, accessory dwelling unit policies, laws requiring ministerial approval of housing that includes an affordability component, and local soft-money loans — that encourage both naturally occurring and deed-restricted affordable housing. Because an individual jurisdiction may struggle to make affordable development feasible on its own, the guide also highlights opportunities for regional collaboration.

The guide is organized to lead with the two local strategies the accompanying presentation highlights and then to detail the funding sources cities can layer in. It is organized into the following sections: (1) Local Housing Trust Funds; (2) Local Policy Tools to Encourage Affordable Housing (including inclusionary housing, accessory dwelling units, ministerial and streamlined approval laws, preservation of existing and naturally occurring affordable housing, and local soft-money loans); (3) Federal Programs and Funding Sources; (4) California State Programs and Funding Sources; (5) Tax Increment Financing and Successor Agency Tools; (6) Key Eligibility Requirements, Application Processes, and Practical Tips; (7) a Summary Comparison Table of Key Programs; (8) Conclusion and Recommended Next Steps; and (9) an Appendix with a glossary of key terms and relevant agency contacts.

Every statute, regulation, and program cited in this white paper has been verified through authoritative legal research. Elected officials and their staff should use this document as a starting point for identifying the programs most suited to their community's needs and for developing a diversified affordable housing funding strategy.

Introduction and Purpose

The cost of housing in California has risen far beyond the reach of millions of the state's residents. According to successive reports from the California Department of Housing and Community Development (HCD), the state must plan for millions of housing units over the coming decades to keep pace with demand, and a significant share of that need is concentrated among very low-income, low-income, and moderate-income households. See, e.g., Government Code § 65589.5. Local governments are on the front lines of this crisis. Cities and counties control land use decisions, administer key federal pass-through programs, and increasingly are expected to fund, facilitate, or mandate the production and preservation of affordable housing.

The purpose of this white paper is to provide a resource identifying the major federal and state programs, local policy tools, and financing mechanisms that jurisdictions can deploy to address affordable housing needs. For each program or tool, this guide identifies the governing legal authority, describes how the program works, identifies eligible uses and applicants, summarizes funding levels where available, and provides practical guidance on how to access the funding or implement the tool.

While no single jurisdiction can solve the affordability crisis alone, there are practical strategies every city can pursue. This guide is built around the two strategies most within a city's direct control. First, a city can form or participate in a local or regional housing trust fund that provides gap financing — loans and grants — to affordable housing projects, drawing on a range of dedicated revenue sources. Second, a city can adopt and refine local policy tools that encourage both naturally occurring and deed-restricted affordable housing, including inclusionary housing programs, accessory dwelling unit policies, state laws that require ministerial approval of housing projects with an affordability component, preservation of existing affordable stock, and local soft-money loans that close project financing gaps. Because a jurisdiction acting on its own may lack the scale to make affordable development feasible, this guide also emphasizes the value of regional collaboration. Sections 1 and 2 address these two local strategies; Sections 3 through 5 then describe the federal, state, and tax increment funding sources cities can layer in to support them.

Part One: Local Strategies to Support Affordable Housing

Section 1: Local Housing Trust Funds

1.1 Overview of Housing Trust Funds

Legal Authority: Health & Safety Code §§ 50842.1–50843.5; Government Code § 6539.1 (joint powers agreement to create a regional housing trust); Government Code §§ 65583.2 (e)(2)(A)(ii), 65589.5 (k)(1)(B), 65589.9 (f)(3)(A) (sections of Housing Element Law referencing housing trust funds). Local agencies also possess broad authority to establish programs and expend funds for municipal purposes pursuant to the California Constitution and applicable local police powers.

Description: A housing trust fund is a dedicated financing mechanism established by one or more public agencies to support the production, preservation, and rehabilitation of affordable housing. Unlike individual appropriations made through the annual budget process, housing trust funds are designed to receive, manage, and reinvest dedicated revenues over many years, providing a stable institutional framework for long-term housing investment. As discussed further below, funding for housing trust funds come from a variety of sources such as local fee or general revenues, state and federal grants and appropriations, and philanthropic contributions.

Housing trust funds may be created and administered directly by a city or county, through a nonprofit corporation, or by a joint powers authority ("JPA") or other regional entity. Regardless of governance structure, trust funds typically provide loans, grants, land acquisition financing, predevelopment assistance, or other gap financing needed to facilitate affordable housing development.

1.2 Local vs. Regional Housing Trust Funds

Housing trust funds may serve a single jurisdiction or multiple jurisdictions working collaboratively. Local housing trust funds allow cities or counties to tailor funding priorities to local needs, while regional housing trust funds enable neighboring jurisdictions to pool financial resources, coordinate housing strategies, and address housing markets that extend beyond municipal boundaries.

Regional housing trust funds have become an increasingly important model in California. By sharing administrative costs, combining technical expertise, and leveraging larger pools of capital, regional trust funds can often finance projects and compete for state and federal funding more effectively than individual jurisdictions acting independently. Regional collaboration may also promote greater consistency in underwriting standards, efficient program administration, and housing investment across a broader geographic area.

1.3 Why Establish a Housing Trust Fund?

Cities and counties may choose to administer affordable housing funding directly through existing departments within the jurisdiction’s purview. However, establishing an independent, dedicated housing trust fund offers several advantages, including creating a permanent institutional framework for affordable housing investment, separating long-term housing financing from annual budget decisions, and improving transparency regarding the receipt and expenditure of housing funds.

In terms of the flexibility of receiving and using various funding sources, housing trust funds provide greater flexibility to receive and administer multiple funding sources, including public funding, private and philanthropic contributions, loan repayments, and program income. This structure facilitates partnerships with developers, lenders, nonprofit organizations, and other public agencies while allowing jurisdictions to recycle repayments into future affordable housing investments and leverage state matching funds available through HCD. Housing trust funds can also improve a jurisdiction's ability to acquire strategic housing sites by maintaining dedicated acquisition capital, providing greater flexibility to make time-sensitive investments, and allowing acquisition financing to revolve into future housing opportunities.

1.4 Governance and Organizational Considerations

The governance structure of a housing trust fund should reflect the needs and priorities of the participating jurisdiction or jurisdictions. Key considerations when forming an independent housing trust fund include the composition of the governing board, decision-making authority, conflict-of-interest policies, eligible uses of funds, underwriting standards, reporting requirements, and long-term financial sustainability. Another approach is through jurisdiction-specific enabling legislation.

Regional housing trust funds are commonly established through joint powers agreements authorized by the California Joint Exercise of Powers Act (Government Code §§ 6500–6599.3). In 2023, the Legislature enacted SB 20 (Stats. 2023, ch. 147), adding Government Code § 6539.1, which authorizes any two or more cities, counties, or councils of governments to establish a regional housing trust through a joint powers agreement, eliminating the need for jurisdiction-specific enabling legislation, what can be a long and challenging process. Whether organized locally or regionally, clear governance policies help promote accountability, consistency, and public confidence in housing investment decisions. For regional housing trusts formed pursuant to Government Code § 6539.1, the statute establishes governance, transparency, and reporting requirements that support these objectives while providing participating agencies with a flexible framework for regional housing investment.

1.5 Common Revenue Sources

Housing trust funds are typically funded through one or more dedicated revenue sources. Common sources include inclusionary housing in-lieu fees, commercial linkage fees and other development impact fees authorized under the Mitigation Fee Act (Government Code §§ 66000–66025), general fund appropriations, successor agency housing assets, tax increment revenues where authorized by law (see Section 5), loan repayments, and investment earnings.

Many housing trust funds also leverage state and federal funding by providing local matching funds or gap financing for affordable housing developments. In addition, trust funds may receive contributions from employers, health care institutions, philanthropic organizations, financial institutions, and other private partners seeking to support affordable housing within the communities they serve.

1.6 California Examples of Housing Trust Funds

California's housing trust funds vary considerably in their governance, funding sources, and geographic focus, reflecting the needs and priorities of the communities they serve. Some are longstanding municipal programs funded through local revenues, while others are newer regional entities created through collaboration among multiple jurisdictions. The following examples illustrate several of the approaches currently in use throughout California.

A. **City of Santa Monica Housing Trust Fund**. Established more than four decades ago, Santa Monica operates one of California's longest-standing municipal housing trust funds. The City's trust fund provides acquisition, predevelopment, rehabilitation, and permanent financing for affordable housing developments and is funded through a combination of redevelopment housing assets, voter-approved local sales tax revenues

(Measures GS and GSH), loan repayments, and other dedicated local housing revenues. The program is administered directly by the City's Housing Division pursuant to adopted Housing Trust Fund Guidelines.

B. **City of West Hollywood Affordable Housing Trust Fund**. West Hollywood has maintained a dedicated affordable housing trust fund for decades as part of its broader affordable housing strategy. The trust fund supports affordable rental housing preservation and development and is funded through a combination of local housing revenues, inclusionary housing in-lieu fees, redevelopment housing assets, and other municipal resources. The City administers the program directly and integrates it with its longstanding rent stabilization and affordable housing policies.

C. **City of Santa Cruz Housing Trust Fund**. Santa Cruz established and administers a municipal housing trust fund to support affordable housing production, preservation, and acquisition. Funding has included local appropriations, housing impact and in-lieu fees, loan repayments, and state housing funds, allowing the City to provide flexible local gap financing while leveraging state and federal resources.

D. **San Gabriel Valley Regional Housing Trust (SGVRHT)**. Created through special legislation in 2020, the SGVRHT serves twenty-five San Gabriel Valley jurisdictions. In addition to providing loans and grants for affordable housing development, the Trust has expanded into regional technical assistance, acquisition financing, and revolving loan fund activities. The programs are funded through member agency contributions, state grants, and other public funding sources. A board of seven jurisdictional representatives and two housing/homeless experts oversee the Trust with administration by both dedicated staff and staff shared with the San Gabriel Valley Council of Governments.

E. **Burbank-Glendale-Pasadena Regional Housing Trust (BGPRHT)**. Established by special legislation in 2022, BGPRHT is governed by representatives of its member jurisdictions. The BGPRHT administers competitive funding programs across the three participating cities using local contributions, state matching funds, and other public resources to finance affordable housing development.

F. **Housing Trust Silicon Valley (HTSV)**. Established in 2000 through a public-private partnership led by the County of Santa Clara, the Silicon Valley Leadership Group, local employers, foundations, and community organizations, HTSV operates as an independent nonprofit Community Development Financial Institution (CDFI). As a certified CDFI, HTSV provides mission-driven financing designed to expand access to capital in underserved communities, allowing it to leverage both public and private investment to support affordable housing and homeownership. Originally focused on Santa Clara County, HTSV now develops and administers financing programs throughout the greater Bay Area and Sacramento region. Since its founding, HTSV has invested more than $690 million to help create more than 28,700 housing opportunities while leveraging approximately $9 billion in additional public and private investment.

G. **Housing Trust Fund Ventura County (HTFVC)**. Created in 2008 through a collaborative effort among Ventura County, its ten incorporated cities, and community partners, HTFVC operates as an independent regional nonprofit housing trust. The organization provides revolving acquisition, predevelopment, construction, and permanent financing for affordable housing developments throughout the county. HTFVC has funded its lending programs through a diverse mix of local government funding, state housing grants, and federal Community Development Financial Institution (CDFI) Fund awards. It has also attracted significant private investment through below-market Community Impact Notes provided by banks, credit unions, foundations, and private companies, as well as contributions from businesses, non-profit organizations, foundations, and individual donors. The Community Impact Notes are fixed-income debt securities purchased by financial institutions and investors that provide a modest financial return with a lower risk profile and help to satisfy Community Reinvestment Act requirements. This diversified capital structure demonstrates how regional housing trust funds can leverage both public and private investment to expand affordable housing opportunities.

H. **San Joaquin Regional Housing Fund (SJRHF)**. Formed in 2024 as a 501(c)(3) nonprofit subsidiary of the San Joaquin Council of Governments, the SJRHF represents a newer generation of regional housing trusts focused on both financing and regional coordination. The SJRHF combines local contributions with philanthropic support, including funding from the insurance provider Health Net, and public housing resources to finance affordable housing developments and regional housing initiatives throughout San Joaquin County.

1.7 Best Practices and Practical Guidance for Elected Officials

Housing trust funds are most successful when they are established with a clearly defined purpose, a sustainable funding strategy, and governance structures that reflect local and regional housing needs. Before creating a new housing trust fund, staff and elected officials should evaluate whether existing staff capacity within their jurisdiction is sufficient to administer affordable housing financing programs or whether greater efficiency and impact could be achieved through collaboration with neighboring jurisdictions. In many regions, a regional housing trust fund may reduce administrative costs, improve access to specialized housing finance expertise, and better align housing investment with regional labor and housing markets.

Regardless of organizational structure, jurisdictions should identify reliable long-term revenue sources, establish transparent underwriting and reporting policies, and coordinate trust fund investments with available federal, state, and private financing programs to maximize leverage. Housing trust funds are most effective when they serve not only as a source of local funding, but also as a platform for attracting additional public and private capital, acquiring strategic development sites, and preserving institutional expertise that supports affordable housing production and preservation over time.

Section 2: Local Policy Tools to Encourage Affordable Housing

2.1 Legal Authority for Inclusionary Housing

Legal Authority: Government Code §§ 65580–65589.8 (Housing Element Law); Government Code § 65850 (zoning authority); Government Code § 65915 (Density Bonus Law). See also *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435 (upholding the validity of inclusionary housing ordinances under California law and State Supreme Court's interpretation of Fifth Amendment).

Description: Inclusionary housing ordinances (also referred to as "inclusionary zoning") require developers of market-rate residential projects to include a specified percentage of affordable units in their developments or, in the alternative, to pay in-lieu fees, dedicate land, or construct affordable units off-site. The California Supreme Court in *California Building Industry Assn. v. City of San Jose* upheld the authority of cities to impose inclusionary requirements as a valid exercise of the police power, holding that such ordinances are consistent with the Housing Element Law and rejecting a claim that such ordinances must be treated as an exaction requiring special scrutiny under the takings clauses of the California and US constitutions. (61 Cal.4th 435.)

2.2 Special Regulations Regarding Inclusionary Ordinances for Rental Housing

Legal Authority: Government Code § 65850 et seq. (the *Palmer* Fix, enacted by AB 1505 (Stats. 2017, ch. 376)).

Pursuant to a court of appeal ruling in 2009 (*Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396), cities were precluded from imposing inclusionary requirements on rental housing under the Costa-Hawkins Rental Housing Act, Civil Code § 1954.50 et seq. However, in 2017, the Legislature enacted AB 1505, which amended Government Code § 65850 to authorize cities and counties to adopt inclusionary housing ordinances that apply to rental housing developments, expressly superseding *Palmer*. The legislation, however, provides that if more than 15% of units in a rental project are required to be affordable, HCD may review and potentially override the city's ordinance if it determines that it unduly constrains housing production. Government Code § 65850.01(a).

2.3 In-Lieu Fees

In-lieu fees are payments made by developers who choose not to construct the required affordable units on-site under the inclusionary housing ordinance. These fees must bear a reasonable relationship to the cost of producing affordable housing and are typically deposited into a local housing trust fund for use in financing affordable housing projects. The Mitigation Fee Act, Government Code §§ 66000–66025, governs the imposition, accounting, and expenditure of such fees, requiring that they be maintained in a separate fund and used exclusively for the purposes for which they were collected. See *Sterling Park, L.P. v. City of Palo Alto* (2013) 57 Cal.4th 1193, 1207; *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 481.

2.4 Practical Tips on Inclusionary Ordinances

Inclusionary housing policies are among the most powerful tools available to local governments for generating affordable units without expending public dollars. However, they must be carefully calibrated to local market conditions to avoid discouraging overall housing production.

Elected officials should work with their planning and legal staff to analyze the local housing market and set inclusionary percentages and in-lieu fee levels that maximize affordable housing production while maintaining overall development feasibility. Compliance with the Density Bonus Law, Government Code § 65915, is essential, as developers of projects that include affordable units are entitled to density bonuses and other incentives by right.

Further, cities often conduct a study to ensure that permit conditions and fees are legally defensible and do not constitute an improper taking. For the following reasons, conducting a study is a best practice.

Generally, when the government imposes conditions on a permit that requires conveyance of property rights or money, the courts will scrutinize the condition to determine if it constitutes an improper taking of private property without just compensation. The analysis is conducted pursuant to rules established in two cases, *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (*Nollan*), and *Dolan v. City of Tigard* (1994) 512 U.S. 374 (*Dolan*), and subsequent decisions. Under this line of cases, courts will consider whether a permit condition constitutes an improper taking by considering: (1) whether there is an "essential nexus" between the permit condition at issue and a legitimate land-use interest, and (2) whether there is rough proportionality between the cost the permit condition imposes on the property owner and the impacts caused by the development that the permit condition is meant to mitigate. If there is not an essential nexus, or rough proportionality is lacking, the permit condition constitutes a taking.

This general rule raises a legal question concerning inclusionary ordinances. If a city requires as a permit condition that a developer agree that a certain number of units be rented at below-market rates to households who income-qualify, this will generally mean that the developer will generate less profit from the development than the developer otherwise would have if the condition had not been imposed. Does this mean that some or all inclusionary ordinances need to be reviewed under the preceding two-step analysis? Do some or all inclusionary ordinances constitute takings of private property without just compensation?

In *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, the California Supreme Court ruled that inclusionary ordinances are not a type of permit condition requiring special scrutiny under *Nollan* and *Dolan*'s two-step analysis. Accordingly, the Court, in effect, endorsed a view that cities do not need to conduct a study prior to adopting an inclusionary ordinance in order for it to be legally defensible.

However, litigation concerning permit conditions is increasingly occurring in federal rather than state court due to the US Supreme Court's decision in *Knick v. Township of Scott, Pennsylvania* (2019) 588 U.S. 180, 194, which permits plaintiffs to bring takings claims directly in federal court without first pursuing state judicial remedies. Federal courts are not obligated to adhere to the California Supreme Court's holding with respect to takings claims under Fifth Amendment of the US Constitution, which raises a federal question, so the California Supreme Court will not have the final answer.

Encouragingly, in *Palmer Kearney Mesa Properties, LP v. City of San Diego* (S.D. Cal., Jan. 16, 2026, No. 23-CV-01755-DMS-BJW) 2026 WL 125686, at *10, a federal district court recently cited *California Building Industry Assn.* approvingly and reached the same conclusion as the California Supreme Court, holding that the inclusionary ordinances are generally not the type of permit condition which trigger the two-step analysis under *Nollan* and *Dolan* discussed above. However, the issue will ultimately need to be resolved by the Ninth Circuit, or US Supreme Court, and as it stands, there is uncertainty. It is possible that federal courts will determine that inclusionary ordinances must each be individually scrutinized under *Nollan* and *Dolan* to determine whether they are valid, or constitute takings under their particular circumstances. If that is the outcome, a study would likely be helpful in defending the City's inclusionary ordinance in any resulting litigation.

Accordingly, we recommend that elected officials have their planning staff review their inclusionary ordinance, or proposed inclusionary ordinances with legal counsel to analyze whether they were prepared in a manner which is less vulnerable to a legal challenge in federal court. Conducting a study concerning whether an inclusionary ordinance passes the test set up in *Nollan* and *Dolan* will help ensure the city can argue later that, even if it is determined by federal courts that the *Nollan/Dolan* analysis is applicable to inclusionary ordinances, the city's particular inclusionary ordinance does not constitute a taking under that city's particular circumstances. This review is especially critical since the U.S. Supreme Court ruled in *Sheetz v. County of El Dorado* (2024) 601 U.S. 267, that *Nollan/Dolan* analysis applies to the imposition of conditions pursuant to legislation, not only to ad-hoc impositions.

2.5 Accessory Dwelling Units (ADUs)

Legal Authority: Government Code §§ 66310–66342 (accessory dwelling unit and junior accessory dwelling unit law, recodified from former §§ 65852.2 and 65852.22 by SB 477 (Stats. 2024, ch. 7)); Government Code § 66311 (legislative intent, formerly § 65852.150).

Description: Accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) are among the fastest and least costly forms of infill housing, and state law now sharply limits a local agency's ability to impede them. A complete ADU permit application must be considered and approved ministerially, without discretionary review or a hearing, and must be approved or denied within 60 days or it is deemed approved. Government Code § 66317. A city may adopt an ADU ordinance, but the ordinance may impose only objective standards (such as parking, height, setback, and size) and may not require a minimum lot size; a noncompliant ordinance is null and void, and the statutory state standards apply by default. Government Code §§ 66314, 66316. Regardless of whether a city has adopted an ordinance, state law guarantees certain by-right units — one ADU and one JADU per single-family lot, one detached new-construction ADU of up to 800 square feet, and conversions of up to 25 percent of the units in an existing multifamily building. Government Code § 66323.

Restrictions on Local Impediments: State law limits common local barriers. No parking may be required where the ADU is within one-half mile of public transit, in a designated historic district, or created by converting existing space, among other circumstances. Government Code § 66322. No impact fee may be imposed on an ADU of 750 square feet or less (or a JADU of 500 square feet or less), and an ADU or JADU generally may not be treated as a new residential use for utility connection-fee or capacity-charge purposes. Government Code § 66311.5.

Affordability and Practical Value: ADUs commonly rent well below market for comparable units and expand the supply of naturally occurring affordable housing without public subsidy. Adopting an ADU ordinance that reduces barriers beyond the statutory baseline also qualifies as a "prohousing" local policy, earning bonus points or preference in competitive state housing and infrastructure funding programs. Government Code § 65589.9. Cities should confirm their ADU ordinances are current with the 2024 recodification and later amendments and should submit any adopted ordinance to HCD within 60 days of adoption, as required. Government Code § 66326.

2.6 Ministerial and Streamlined Approval of Housing With an Affordability Component
Legal Authority: Government Code § 65913.4 (SB 35 streamlined ministerial approval, as amended and extended by SB 423 (Stats. 2023, ch. 778)); Government Code §§ 65912.100–65912.132 (the Affordable Housing and High Road Jobs Act of 2022 (AB 2011)); Government Code § 65915 (Density Bonus Law); Government Code § 65589.5 (Housing Accountability Act).

Description: Several state laws now require cities to approve qualifying housing projects ministerially — without discretionary review or public hearings — when the project includes a defined affordability component. These laws effectively convert a portion of the local approval process from discretionary to by-right.

SB 35 / SB 423 (§ 65913.4): In a jurisdiction that has not met its share of the regional housing need, a multifamily project of two or more units that satisfies objective planning standards and dedicates the required share of affordable units must be approved through a streamlined, ministerial process and is not subject to a conditional use permit or other nonlegislative discretionary approval. The required affordability share depends on which category of housing need the jurisdiction has failed to meet — generally at least 10 percent of units affordable (to households at or below 50 percent of AMI for rental projects, or 80 percent of AMI for ownership projects), rising to 50 percent of units where the shortfall is in lower-income housing. The city must document any conflict with objective standards within 60 days (150 or fewer units) or 90 days (more than 150 units), or the project is deemed to satisfy those standards.

AB 2011 (§§ 65912.100 et seq.): The Affordable Housing and High Road Jobs Act of 2022 makes housing a use by right, subject to streamlined ministerial review, on eligible commercial corridors. A 100-percent-affordable project — all units dedicated to lower-income households under a recorded 55-year (rental) or 45-year (ownership) covenant — qualifies under Article 2. A mixed-income project qualifies under Article 3 if it meets specified affordability set-asides (for rental, either 8 percent very-low-income plus 5 percent extremely-low-income units, or 15 percent lower-income units). The local government must approve a consistent project within 60 or 90 days and may not impose additional fees or inclusionary requirements based solely on the project's streamlined eligibility.

SB 4 — Affordable Housing on Faith and Higher Education Lands (§ 65913.16): The Affordable Housing on Faith and Higher Education Lands Act of 2023 makes affordable housing a use by right — not subject to a conditional use permit or other discretionary review, and not a "project" for purposes of CEQA — on land owned on or before January 1, 2024 by a religious institution or an independent institution of higher education. Substantially all units must serve lower income households, with limited exceptions permitting up to 20 percent of units for moderate-income households and up to 5 percent for the institution's staff, under a recorded 55-year (rental) or 45-year (ownership) affordability covenant. Government Code § 65913.16 (added by SB 4, Stats. 2023, ch. 771). The Act sunsets January 1, 2036.

SB 79 — Transit-Oriented Development (§§ 65912.155–65912.161): The 2025 Transit-Oriented Development law makes housing an allowed use near major transit stops — generally within one-quarter to one-half mile — and establishes tiered minimum density and height standards (rising to approximately 120 units per acre and 75 feet at the highest-tier stops). A qualifying project must include affordable units — generally 7 percent for extremely-low-income, 10 percent for very-low-income, or 13 percent for lower-income households, with projects of 10 units or fewer exempt — under a recorded 55-year (rental) or 45-year (ownership) covenant. Government Code § 65912.157. Standing alone, SB 79 confers "allowed use" status rather than ministerial approval; a project obtains by-right, ministerial approval by electing the streamlined process under Government Code § 65913.4, as provided in Government Code § 65912.159. Enacted by Stats. 2025, ch. 512, SB 79 is effective January 1, 2026 and generally applies at the local level beginning July 1, 2026.

Density Bonus Law (§ 65915): A project that dedicates a qualifying share of affordable units is entitled, by right, to increased density plus a graduated number of incentives or concessions, waivers of development standards, and reduced parking. Although not itself a wholesale ministerial-approval track, it is a mandatory entitlement overlay that cities must grant.

Housing Accountability Act (§ 65589.5): The Act sharply limits a city's ability to deny or reduce the density of an affordable or mixed-income housing project, requiring written findings before disapproval; where a jurisdiction lacks a compliant housing element, it also constrains the conditions the city may place on a "builder's remedy" project.

Practical Value: These statutes shift much of the discretion, risk, and delay out of the entitlement process for affordable projects, materially improving feasibility and competitiveness for state and federal funding. Cities should align their objective design standards, application checklists, and staff procedures with these ministerial pathways.

2.7 Preservation of Existing and Naturally Occurring Affordable Housing
Legal Authority: Government Code §§ 65863.10–65863.13 (preservation notice and opportunity-to-purchase law); Government Code §§ 65583(a)(9), (c)(4), (c)(6) and 65583.1 (housing element preservation mandates and local acquisition authority).

Description: Producing new units is only half the task. Preserving existing affordable units — both deed-restricted units at risk of converting to market rate and unsubsidized "naturally occurring" affordable housing (NOAH) — is often faster and less costly than new construction, and state law gives cities both advance notice and tools to act.

At-Risk Assisted Housing: The owner of an assisted housing development (a rental development of five or more units receiving specified federal, state, or local assistance) must give at least 12 months' notice to affected tenants and to affected public entities — including HCD and the city — before terminating a subsidy contract, prepaying the mortgage, or allowing rental restrictions to expire, followed by a further six-month notice. Government Code § 65863.10. Before that conversion, the owner must first give qualified entities — including the tenant association, local nonprofit organizations, and public agencies — an opportunity to purchase the development at market value, with a 270-day window to submit a bona fide offer. Government Code § 65863.11. An owner is exempt only where a recorded regulatory agreement maintains affordability for at least 30 years. Government Code § 65863.13.

Housing Element Mandates: Every housing element must inventory assisted developments at risk of converting within the next ten years, estimate the cost of preserving versus replacing them, and adopt a program to preserve them for lower-income households using all available financing; the jurisdiction must also conserve and improve the condition of its existing affordable stock. Government Code § 65583(a)(9), (c)(4), (c)(6).

Local Acquisition of NOAH: A city or county may acquire unsubsidized units — in foreclosed properties or in multifamily complexes of three or more units — and convert them to affordable housing through "committed assistance," recording covenants that keep the units affordable to lower-income households for at least 55 years, and may count those units toward its regional housing need. Government Code § 65583.1.

Practical Value: Housing trust funds and the acquisition tools described in this guide are well suited to preservation. A city can pair a soft acquisition loan with a recorded affordability covenant to capture expiring-use or NOAH units before they are lost to the market.

2.8 Local Soft-Money Loans and Gap Financing

Even where a project has secured its primary financing, most affordable developments cannot close without a final layer of "soft" money — low-interest or deferred-payment loans, and occasionally grants, that fill the gap between total development cost and the funds available from conventional loans and tax credit equity. Providing that gap financing is one of the most direct tools a city has to make a specific project feasible. Local soft-money loans are typically structured as residual-receipts or deferred-payment loans secured by a recorded regulatory agreement, so that the city's funds are repaid over time and recycled into future projects while the affordability restriction runs with the land. Cities commonly draw these funds from a local housing trust fund (Section 1), inclusionary in-lieu fees (Section 2.3), Housing Successor and other legacy redevelopment resources (Section 5.2), and federal HOME and CDBG allocations (Section 3). Because state programs such as HCD’s Multifamily Housing Program and CTCAC / CDLAC tax credit and bond financing expressly credit local contributions in their competitive scoring, even a modest local soft loan can help secure substantially larger state and federal awards.

Part Two: Federal, State, and Tax Increment Funding Sources to Layer In

Section 3: Federal Programs and Funding Sources

The federal government is a significant source of funds that can be used by local jurisdictions for affordable housing programs. Most federal housing programs are administered by the U.S. Department of Housing and Urban Development (HUD), though the Internal Revenue Service (IRS), the Federal Home Loan Banks, and the U.S. Department of Agriculture (USDA) also play significant roles. The following subsections describe each major federal program available to California cities.

Under the second Trump administration (beginning January 2025), some affordable housing programs and funding streams have been modified, ended, or are under review. Most core HUD programs—including Housing Choice Vouchers, HOME, CDBG, and public housing assistance—remain authorized and funded. However, HUD has terminated the Affirmatively Furthering Fair Housing (AFFH) rule, sought to restrict housing assistance for mixed-immigration-status households, and implemented significant workforce reductions. California local governments relying on federal funding may need to reassess their programs or develop alternative strategies. Additionally, Executive Order No. 14394 conditions certain grant funding on local adoption of streamlined permitting, capped fees, and other housing production practices, which may affect California jurisdictions.

It should be noted that the current administration has not eliminated the Fair Housing Act itself. The Fair Housing Act of 1968 remains federal law and continues to prohibit housing discrimination based on race, color, religion, sex, national origin, disability, and familial status. HUD and courts remain obligated to enforce those statutory protections.

What has changed is the administration's approach to the AFFH regulations, which are rules governing how HUD grantees demonstrate compliance with the Fair Housing Act's requirement to promote fair housing. In 2025, HUD withdrew a proposed AFFH rule and adopted a significantly streamlined interim rule.

3.1 Community Development Block Grant (CDBG) Program

Legal Authority: Title I of the Housing and Community Development Act of 1974, as amended, codified at 42 U.S.C. §§ 5301–5321; implementing regulations at 24 C.F.R. Part 570.

Description: The Community Development Block Grant (CDBG) Program provides formula-based grants to states, cities, and counties to address a wide range of community development needs, including affordable housing. Entitlement communities—cities with populations of 50,000 or more and urban counties of 200,000 or more—receive CDBG funds directly from HUD. Non-entitlement communities receive CDBG funds passed through the State. Local agencies may use CDBG funds to subsidize property acquisition, rehabilitate homes, and provide down payment or purchase assistance to lower-income residents.

Eligible Uses: CDBG funds may be used for a broad range of housing and community development activities, including acquisition of real property, rehabilitation of residential and nonresidential structures, construction of public facilities and improvements, public services (up to 15% of the grant), homeownership assistance, and assistance to for-profit entities for economic development. All activities must meet one of three national objectives: (1) benefiting low- and moderate-income persons; (2) preventing or eliminating slums or blight; or (3) addressing urgent community development needs. 42 U.S.C. §§ 5301(c), 5304(b)(3), and 5305; 24 C.F.R. § 570.208.

Funding Amounts and Limits: The total annual CDBG appropriation is set by Congress. Grant allocations to entitlement communities and states are determined by a dual statutory formula based on criteria including population, poverty levels, housing overcrowding, and age of the housing stock. For entitlement communities, one formula weights poverty (50%), population (25%), and overcrowded housing (25%), while the alternative formula uses age of housing stock (50%), poverty (30%), and population growth lag (20%). Communities receive the greater of these two amounts, subject to a pro rata reduction if total allocations exceed available funds. Administrative costs are capped at 20% of the grant amount plus program income. 42 U.S.C. § 5306.

How to Access: Entitlement communities receive CDBG funds directly from HUD upon submission of a Consolidated Plan, which is a five-year strategic plan, and an Annual Action Plan. 24 C.F.R. § 91.1 et seq. Non-entitlement communities apply through the State of California's HCD, which administers the state CDBG program. Jurisdictions must certify compliance with the Civil Rights Act of 1964, the Fair Housing Act, 42 U.S.C. §§ 3601–3619, and the obligation to affirmatively further fair housing. 42 U.S.C. § 5304(b). Non-entitlement cities in California are not required to prepare and submit their own Consolidated Plan or Annual Action Plan directly to HUD. Instead, it is the State of California, through its Department of HCD, that bears the obligation to submit a Consolidated Plan and Annual Action Plan to HUD in order to receive and distribute CDBG funds to non-entitlement communities. Non-entitlement cities access CDBG funds by applying directly to HCD through a competitive application process governed by California's state CDBG program regulations.

3.2 HOME Investment Partnerships Program

Legal Authority: Title II of the Cranston-Gonzalez National Affordable Housing Act of 1990, codified at 42 U.S.C. §§ 12721–12839; implementing regulations at 24 C.F.R. Part 92.

Description: The HOME program is the largest federal block grant specifically dedicated to creating affordable housing for low-income households. It provides formula grants to states and to participating jurisdictions (cities and counties that qualify by population or through a consortium agreement). HOME funds are designed to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing for very low-income and low-income families.

Eligible Uses: HOME funds may be used for four categories of activities: (1) acquisition of existing housing; (2) new construction of housing; (3) rehabilitation of existing housing (including reconstruction); and (4) tenant-based rental assistance. 42 U.S.C. § 12742. All HOME-assisted housing must serve households at or below 80% of area median income (AMI), and a specified percentage of rental units must serve households at or below 60% of AMI. 42 U.S.C. § 12744; 24 C.F.R. §§ 92.2, 92.216(a). Jurisdictions must provide a 25% nonfederal match, which may be reduced for communities in fiscal distress. 42 U.S.C. § 12750.

Funding Amounts and Limits: HOME allocations are determined by a statutory formula. Per-unit subsidy limits are established by HUD for each geographic area. HOME-assisted rental units are subject to affordability periods ranging from 5 to 20 years depending on the amount of subsidy and type of activity. 24 C.F.R. § 92.252.

How to Access: Participating jurisdictions must submit a Consolidated Plan and Annual Action Plan pursuant to 42 U.S.C. § 12705. Jurisdictions that do not qualify individually may form a consortium with other local governments to meet the funding threshold. Smaller jurisdictions may also access HOME funds through the State of California, which receives a state-level HOME allocation.

3.3 Low-Income Housing Tax Credit (LIHTC)

Legal Authority: Internal Revenue Code § 42, codified at 26 U.S.C. § 42; Treasury regulations at 26 C.F.R. § 1.42.

Description: LIHTC provides federal income tax credits to private investors who invest equity in qualified affordable housing developments. The credits are allocated to state housing finance agencies, which in turn allocate them to developers through a competitive application process. In California, the state housing finance agency is the California Tax Credit Allocation Committee ("CTCAC").

There are two types of credits: the "9% credit," which provides a larger subsidy for new construction or substantial rehabilitation projects that are not federally subsidized (as defined in 26 U.S.C. § 42(i)(2)), and the "4% credit," which is used in conjunction with tax-exempt bond financing. 26 U.S.C. § 42(b).

Eligible Uses: Credits may be used for new construction, acquisition and rehabilitation, or substantial rehabilitation of residential rental housing. Projects must meet one of three income tests: (A) at least 20% of units must be rent-restricted and occupied by households at or below 50% of AMI (the "20-50 test"); (B) at least 40% of units must be occupied by households at or below 60% of AMI (the "40-60 test"); or (C) the "average income test," added by the Consolidated Appropriations Act of 2018, which allows units to serve households at varying income levels (up to 80% of AMI per unit) provided the average imputed income limitation across all restricted units does not exceed 60% of AMI. 26 U.S.C. § 42(g)(1). Projects must maintain affordability for an initial 15-year compliance period, plus an additional 15-year extended use period for projects placed in service after 1989. 26 U.S.C. § 42(h)(6).

Funding Amounts and Limits: Each state receives an annual per capita allocation of 9% credits, which is adjusted periodically for inflation. The 4% credit is not subject to a per capita cap and is available as of right for projects financed with tax-exempt bonds meeting the 50% rule under 26 U.S.C. § 42(h)(4). Noncompliance during the initial compliance period may result in recapture of a portion of the tax credits by the IRS. 26 U.S.C. § 42(j).

How to Access: Developers apply to CTCAC for an allocation of tax credits. Local governments can support LIHTC projects by providing land, gap financing (such as HOME or CDBG funds), fee waivers, or expedited entitlements. Cities and counties do not directly receive the tax credits but play a critical role in facilitating projects that utilize them.

3.4 Section 8 Housing Choice Voucher Program and Project-Based Rental Assistance

Legal Authority: Section 8 of the United States Housing Act of 1937, codified at 42 U.S.C. § 1437f; implementing regulations at 24 C.F.R. Parts 982 (tenant-based) and 983 (project-based).

Description: Section 8 is a federal government program that assists very low-income families. 42 U.S.C. § 1437f(a). The program operates in two forms: tenant-based rental assistance (the Housing Choice Voucher program), which allows eligible households to select housing of their choice and use the voucher to pay a portion of rent, and project-based rental assistance, which is attached to specific housing units pursuant to a housing assistance payments ("HAP") contract between HUD and a local public housing agency ("PHA"). The PHA in turn contracts with property owners. A public housing agency is any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of public housing, or a consortium of such entities or bodies as approved by the Secretary. 42 U.S.C. § 1437a.

Eligible Uses: Vouchers subsidize rental housing for eligible families, who generally pay approximately 30% of their adjusted income toward rent. The voucher covers the balance of the rent up to a payment standard. At the time a family initially receives tenant-based assistance, the total amount a family may be required to pay for rent may not exceed 40% of monthly adjusted income. 42 U.S.C. § 1437f(o). PHAs administer the program, determine eligibility, inspect housing units for compliance with housing quality standards, and execute contracts with landlords. 24 C.F.R. § 982.1.

How to Access: Section 8 vouchers are administered by local PHAs. Cities and counties that operate or oversee a PHA receive voucher allocations from HUD. Jurisdictions without a PHA may be served by a county or regional housing authority, or HUD may choose to administer the program directly. HUD periodically issues Notices of Funding Availability ("NOFAs") for new voucher increments, including special-purpose vouchers (e.g., Veterans Affairs Supportive Housing ("VASH") vouchers and Emergency Housing Vouchers).

3.5 Choice Neighborhoods Initiative

Legal Authority: Authorized under annual HUD appropriations acts; program rules published in the Federal Register and governed by HUD NOFAs and grant agreements.

Description: The Choice Neighborhoods Initiative provides competitive grants to local governments, PHAs, and nonprofits for the transformation of distressed public and assisted housing and surrounding neighborhoods. The program funds comprehensive neighborhood revitalization plans that include housing, education, and economic development strategies.

Eligible Uses: Grants may be used for planning activities (Planning Grants) or for full implementation of a neighborhood transformation plan (Implementation Grants), including demolition and replacement of severely distressed public housing with mixed-income housing, critical community improvements, and supportive services.

How to Access: HUD issues NOFAs for Choice Neighborhoods grants on a periodic basis. Applicants must demonstrate a comprehensive plan, significant leveraging of other public and private resources, and community engagement.

3.6 Federal Home Loan Bank Affordable Housing Program (AHP)

Legal Authority: Federal Home Loan Bank Act, 12 U.S.C. § 1430(j); implementing regulations at 12 C.F.R. Part 1291.

Description: Each of the 12 Federal Home Loan Banks ("FHLBanks") is required to establish an Affordable Housing Program that provides subsidies to member financial institutions for the purchase, construction, or rehabilitation of owner-occupied and rental housing for very low-, low-, and moderate-income households. 12 U.S.C. § 1430(j)(1). In California, the relevant FHLBank is the Federal Home Loan Bank of San Francisco.

Eligible Uses: AHP subsidies may be provided as direct grants or as subsidized advances (below-market-rate loans) to FHLBank member financial institutions on behalf of eligible housing projects. Owner-occupied projects must serve households at or below 80% of AMI. Rental projects must reserve at least 20% of units for households at or below 50% of AMI.

How to Access: Local governments typically access AHP funds by partnering with an FHLBank member institution (such as a commercial bank or credit union) that sponsors the application. The FHLBank of San Francisco conducts a competitive application process, typically on an annual basis. Note that funding was decreased for FY2025, and may be eliminated for FY2026.

3.7 USDA Rural Development Housing Programs

Legal Authority: Title V of the Housing Act of 1949, codified at 42 U.S.C. §§ 1471–1490; implementing regulations at 7 C.F.R. Parts 3550–3560.

Description: The USDA Rural Development programs provide loans, grants, and loan guarantees for affordable housing in rural areas. Key programs include: (1) Section 502 Direct Loans, which provide low-interest direct loans to low- and very low-income applicants for homeownership in eligible rural areas (42 U.S.C. § 1472); (2) Section 515 Rural Rental Housing Loans, which provide direct loans to developers for the construction or rehabilitation of affordable multifamily rental housing in rural areas (42 U.S.C. § 1485); and (3) Section 514/516 Farm Labor Housing Loans and Grants, which fund housing for domestic farm laborers (42 U.S.C. §§ 1484, 1486).

Eligible Uses: Funds may be used for construction, acquisition, rehabilitation, and related costs of affordable housing in areas classified as "rural" by USDA (generally, areas with populations under 35,000 that are not within a metropolitan statistical area).

How to Access: Applications are submitted through the local USDA Rural Development office. California has multiple USDA Rural Development offices serving various regions. These programs are particularly relevant for smaller cities and rural counties in the Central Valley, Inland Empire, and northern California.

Section 4: California State Programs and Funding Sources

California has developed an extensive network of state-level programs to complement federal funding. Many of these programs are administered by HCD or the California Housing Finance Agency ("CalHFA") and are funded through a combination of general fund appropriations, voter-approved bond measures, and dedicated revenue streams. Recently in SB 417, the legislature adopted the Veterans and Affordable Housing Bond Act of 2026, which authorized the issuance of bonds totaling $11.25 billion, with proceeds allocated to fund these programs. The issuance of the bonds is contingent on voter approval in the November 2026 general election.

4.1 California Department of Housing and Community Development (HCD) Programs
HCD administers more than 20 programs that provide loans, grants, and technical assistance for affordable housing. The following are some of the key programs available to cities.

4.1.1 Infill Infrastructure Grant Program (IIG)
Legal Authority: Health & Safety Code § 53559.

Description: The IIG program provides grants to local governments for infrastructure improvements necessary to facilitate the development of new infill housing in designated infill areas. Health & Safety Code § 53559; see also, e.g., HCD 2021 Round 7 IIG Program Guidelines, available online at https://www.hcd.ca.gov/funding/iig/archive.

Eligible Uses: Grants may fund infrastructure improvements such as water, sewer, traffic, parks, streets, utility service improvements, transit facilities, and site preparation costs that are directly related to a qualifying infill housing project. Projects must include a significant affordable housing component. *Id*.

How to Access: HCD issues NOFAs and accepts applications on a periodic basis. *Id*. Applicants must demonstrate that the infrastructure investment is necessary for and will directly facilitate the qualifying housing development. Awards are issued on a competitive basis. The most recent NOFA was in 2023, however, SB 417 allocates $500M in bond proceeds to this program, so if voters approve the bond measure, we should expect to see more NOFAs in the future under this program. Health & Safety Code § 54054(b)(9).

4.1.2 CalHome Program
Legal Authority: Health & Safety Code §§ 50650–50665.

Description: CalHome provides grants to local governments and nonprofits for first-time homebuyer mortgage assistance and for owner-occupied housing rehabilitation. The program is specifically designed to assist low- and very low-income households in becoming or remaining homeowners. Health & Safety Code § 50650, see also HCD's Program Description, available online at https://www.hcd.ca.gov/funding/calhome#po-main-title. The 2018 Veterans and Affordable Housing Bond Act allocated $300M to the CalHome Program. Health & Safety Code § 54006(g). The statute includes a deadline to encumber funds by November 6, 2028 (a deadline to encumber is the deadline to enter into an agreement with the state with respect to funds under the program, not a deadline for funds to be disbursed.[1]) There is not currently an active NOFA, but it seems possible given that there are still a few years left to encumber funds. Further, SB 417 allocates $600M in bond proceeds to CalHome, provided that the bond measure is approved by voters in the November 2026 general election. Health & Safety Code § 54054(b)(5).

Eligible Uses: Funds may be used for: (1) deferred-payment loans to first-time homebuyers for down payment assistance and closing costs; (2) deferred-payment loans for owner-occupied housing rehabilitation; and (3) technical assistance for self-help homeownership projects. 2021 CalHome Program NOFA, p. 5, available online at https://www.hcd.ca.gov/funding/calhome/archive.

How to Access: HCD issues NOFAs for CalHome on a periodic basis. Local governments and qualified nonprofits apply directly to HCD.

4.1.3 Multifamily Housing Program (MHP)

Legal Authority: Health & Safety Code §§ 50675–50675.14.

Description: The MHP provides deferred-payment loans for the new construction, rehabilitation, conversion of nonresidential structures to rental housing, and preservation of permanent and transitional rental housing for lower-income households. Health & Safety Code § 50675.4. MHP is one of HCD's most competitive programs and has been a cornerstone of state affordable housing finance for decades. SB 417 allocates $5.1B in bond proceeds to fund this program, with an additional $1.15B to fund supportive housing, provided that the bond measure is approved by the voters in the November 2026 general election. Health & Safety Code § 54054(b)(1)-(2).

Eligible Uses: Loans may fund new construction, rehabilitation, or acquisition and rehabilitation of rental housing serving lower income households. Supportive housing projects are also eligible. Health & Safety Code §§ 50675.14, 54054(b)(2), 53533(a)(3). SB 417, if approved, includes programs for homeless and youth housing as well. Health and Safety Code § 54054(b).

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[1] Funds are generally deemed to be "encumbered" "at the time and to the extent that a valid obligation against the appropriation is created." (Gov. Code § 16304.) The phrase "valid obligation" refers to a legal obligation. (See *State v. Agostini*, 139 Cal.App.2d 909, 916.) Thus for our purposes here, the deadline to encumber funds refers to a deadline by which some enforceable obligation must be entered into with the state with respect to the funds. It is not a deadline for the funds to be disbursed by that date.

How to Access: HCD issues NOFAs for MHP on a periodic basis. The last NOFA was in 2021, however, in light of SB 417, we expect to see new NOFAs in this space if voters approve the bond measure. Eligible applicants include local governments, nonprofits, and for-profit developers. Applications are evaluated on a competitive basis.

4.1.4 Affordable Housing and Sustainable Communities (AHSC) Program

Legal Authority: Pub. Res. Code § 75200 et seq, Health and Safety Code § 39719.4.

Description: This program provides grants and/or loans for projects that achieve greenhouse gas reductions and benefit communities through increasing accessibility of affordable housing, employment centers, and key destinations via low-carbon transportation. "Key Destinations" is defined in the program guidelines, and generally means "vital community amenities and resources with a consistent presence located within the project area." 2026 AHSC Round 10 Program Guidelines, p. 66, available online at https://sgc.ca.gov/grant-programs/ahsc/guidelines/.

Eligible Uses: Eligible projects must have a sustainable transportation improvement component, and an affordable housing development or housing related infrastructure component, among other requirements. 2026 AHSC Round 10 Program Guidelines, section 102(b), available online at https://sgc.ca.gov/grant-programs/ahsc/guidelines/.

How to Access: AHSC is funded on a recurring basis from California's greenhouse gas cap and trade system. A NOFA was released as recently as February 2026. Recent awardees commonly include developers and cities as co-applicants. We expect to see future AHSC NOFAs.

4.2 California Housing Finance Agency (CalHFA) Programs

CalHFA is the state's affordable housing lender. It provides below-market-rate loans and financing tools for both single-family and multifamily affordable housing. CalHFA's multifamily programs are described here.

4.2.1 CalHFA Multifamily Permanent Loan Program

Legal Authority: Health and Safety Code sections 51100, 51125.

Description: CalHFA offers tax-exempt, long-term financing for affordable multifamily projects. Tax-Exempt Permanent Loan Termsheet, available online at: https://www.calhfa.ca.gov/multifamily/programs/index.htm.

Eligible Uses: Projects including newly constructed or acquisition/rehabilitation developments that provide affordable housing opportunities. Minimum loan amount is $5,000,000. It is available to for-profit, nonprofit, and public agency sponsors. Projects must ensure that at least 20% of units are restricted to renters with income of 50% or less of area AMI, or that 40% of units are restricted to renters with income of 60% or less of area AMU. Detailed criteria for eligibility is available at the term sheet linked above.

4.2.2 CalHFA Conduit Issuer Program

Legal Authority: Health and Safety Code sections 51330-51332, 51350, 51365, 51374, 51478.

Description: Many affordable housing projects are financed in part through the issuance of bonds. Private activity bonds are a type of bond often used to help finance construction. These bonds are attractive to investors because interest earned on these bonds is tax-exempt. See e.g., Introduction to Low-Income Housing Tax Credits, 8th Ed., Novogradac, 2024, p. 31-32. The power to control these bonds is allocated to the states, and the amount of tax-exempt bonds is capped per state. See 26 U.S.C. § 146. CalHFA's Conduit Issuer Program is designed to facilitate access to tax-exempt and taxable bonds by developers that seek financing for eligible projects in California. Conduit Issuer Termsheet, available online at: https://www.calhfa.ca.gov/multifamily/programs/index.htm. In a conduit financing, CalHFA lends its issuance authority and tax-exempt status to the transaction, but the debt is repaid entirely by the borrower and secured by the financed project.

Eligible Uses: Projects including newly constructed or acquisition/rehabilitation developments that provide affordable housing opportunities. Eligible applicants include for-profit, nonprofit, or public agencies. Projects must ensure that at least 20% of units are restricted to renters with income of 50% or less of area AMI, or that 40% of units are restricted to renters with income of 60% or less of area AMU. Detailed criteria for eligibility is available at the term sheet linked above. As noted above, the volume of tax-exempt bonds in each state are capped. In California, the California Debt Limit Allocation Committee (CDLAC) is responsible for allocating the bonds to project applicants. Gov. Code 8869.80 et seq. Accordingly, a project needs to be approved by CDLAC in order for CalHFA to be able to serve as a conduit for tax-exempt bonds.

4.3 Local Housing Trust Fund Matching Grant Program

Legal Authority: Health & Safety Code §§ 50842.1, 50842.2, 50843.5, 54006(f), see also HCD Program Overview, available online at https://www.hcd.ca.gov/funding/lhtf#overview.

Description: This state program provides matching grants to local and regional housing trust funds that have been established to support affordable housing. The program is designed to incentivize the creation of local housing trust funds by providing state matching dollars. The money provided by the state must be used to provide construction loans or permanent financing loans from the housing trust fund to support construction of affordable housing.

Eligible Uses: Loans for acquisition, predevelopment expenses and development of affordable rental housing projects, transitional housing projects, emergency shelters and homeownership projects, including down payment assistance to qualified first-time homebuyers, and for rehabilitation of homes owned by income-eligible homeowners. No more than 20 percent of each allocation may assist moderate-income households, and at least 30 percent of each allocation is required to assist extremely low-income households. (https://www.hcd.ca.gov/funding/lhtf#overview).

How to Access: Eligible local housing trust funds apply to HCD for matching grants pursuant to NOFAs. To qualify, the local trust fund must have a dedicated source of revenue and must serve households at specified AMI levels. SB 417 earmarked $200M for this program, however, the statutory text indicates that additional legislative action, potentially through a budget trailer bill item, will be needed to actually allocate the money so that it can be spent in support of the program. Health & Safety Code § 54054(b)(11).

4.4 Additional State Programs and Mechanisms

Golden State Acquisition Fund (GASF): A revolving loan fund administered by a consortium of community development financial institutions, providing short-term acquisition loans for affordable housing sites. HCD provided the initial capitalization. Cities are eligible to apply. Funds can be used for acquisition of vacant land or existing properties for rental or homeownership development. Development must be for affordable housing meeting income requirements. GASF website, available online at https://www.goldenstate-fund.com/. This program is not administered directly by HCD.

Joe Serna Jr. Farmworker Housing Grant Program: Health & Safety Code §§ 50517.5–50517.11. Provides grants and loans for the new construction, rehabilitation, and acquisition of owner-occupied and rental housing for agricultural workers and their families. HCD Program Overview, available online at https://www.hcd.ca.gov/funding/fwhg. Cities are among the eligible applicants. HCD 2021 NOFA, p. 3., available online at https://www.hcd.ca.gov/funding/fwhg/archive. SB 417 allocates $450M to this program, provided that the bond measure is approved by voters. Health & Safety Code § 54054(b)(7).

Homekey+ Program: Homekey+ is a major HCD program which builds on HCD's earlier Homekey Program, and that provides grants to local public entities (cities, counties, and other public agencies) for the acquisition and rehabilitation of motels, hotels, hostels, and other buildings for conversion into housing-first permanent or interim housing for veterans and other individuals with a behavioral health challenge who are at-risk of, or are experiencing homelessness. Homekey+ is funded with $2.1B in funding from Proposition 1, which passed in 2024. HCD recently amended its NOFA on March 27, 2026, and as of the date of this paper, its website does not indicate that funds have been exhausted. HCD Homekey+ Website, available online at https://www.hcd.ca.gov/grants-and-funding/homekey-plus. See also March 27, 2026 Amended NOFA, available from the Homekey+ website.

Multifamily Finance Super NOFA: This program provides gap funding for projects which have previously received an HCD funding award, but which have not proceeded to construction because the project did not receive an allocation of tax-exempt bonds from CDLAC and/or were not allocated tax credits by the California Tax Credit Allocation Committee (CTCAC), and accordingly sufficient financing was not available. Where a project is otherwise ready to proceed, but is not allocated needed bonds, or tax credits, it can create a financing gap which stalls the project. The Super NOFA is intended to help ensure these projects have funding so that they can apply again for bonds and tax credits. This program serves projects participating in the Multifamily Housing Program, Infill Infrastructure Grant Program, Veterans and Homelessness Prevention Program, and Jose Serna, Jr. Farmworker Housing Grant Program, which meet the aforementioned criteria. HCD Super NOFA website, available online at https://www.hcd.ca.gov/funding/supernofa.

Section 5: Tax Increment Financing and Successor Agency Tools

5.1 Evolution from Redevelopment to Modern Tax Increment Financing
Legal Authority: Former Community Redevelopment Law, Health & Safety Code §§ 33000–33855; Health & Safety Code §§ 34161–34191.6 (the Dissolution Act, enacted by ABx1 26 (Stats. 2011, 1st Ex. Sess., ch. 5) and amended by AB 1484 (Stats. 2012, ch. 26)).

Description: For more than sixty years, California redevelopment agencies were the primary local source of affordable housing financing. Redevelopment agencies captured tax increment revenues generated within designated project areas and were required to dedicate at least twenty percent of those revenues to the development, preservation, and rehabilitation of housing affordable to low- and moderate-income households. (Former Health & Safety Code § 33334.2.)

In 2011, the Legislature enacted ABx1 26 (Stats. 2011, 1st Ex. Sess., ch. 5), dissolving all redevelopment agencies effective February 1, 2012. The California Supreme Court upheld the legislation in California Redevelopment Assn. v. Matosantos (2011) 53 Cal.4th 231. Although redevelopment agencies no longer exist, California has since created several alternative tax increment financing tools that allow local governments to support affordable housing and related public infrastructure.

5.2 Housing Successor Assets and Ongoing Redevelopment Housing Resources
Legal Authority: Health & Safety Code §§ 34176–34176.1.

Description: Although redevelopment agencies were dissolved, many cities and counties continue to administer affordable housing assets through their designated Housing Successor. Housing Successors generally assumed responsibility for the former Low and Moderate Income Housing Asset Funds, including real property, loan portfolios, enforceable obligations, and other housing-related assets transferred pursuant to the Dissolution Act.

Housing Successors may continue to use these assets for affordable housing purposes authorized by law, including property acquisition, housing rehabilitation, preservation, and loans or grants for affordable housing development. For many jurisdictions, these legacy redevelopment resources remain an important source of local housing financing and may be combined with newer state, federal, and local funding programs.

5.3 Enhanced Infrastructure Financing Districts (EIFDs)
Legal Authority: Government Code §§ 53398.50–53398.88.

Description: Enhanced Infrastructure Financing Districts (EIFDs) allow cities and counties to dedicate future growth in property tax revenues to finance public infrastructure and other eligible public capital facilities, including affordable housing. Unlike former redevelopment agencies, EIFDs require the voluntary participation of affected taxing entities and generally do not divert school district revenues.

EIFDs offer local governments a flexible financing mechanism for supporting housing-related infrastructure, site preparation, utilities, transportation improvements, and affordable housing developments that facilitate broader economic development. In 2019, legislation was enacted (AB 116) to allow EIFDs to issue bonds upon approval by a Public Financing Authority without voter approval, increasing their practicality as a long-term financing tool. (Government Code § 53398.77.)

5.4 Community Revitalization and Investment Authorities (CRIAs)
Legal Authority: Government Code §§ 62000–62208.

Description: Community Revitalization and Investment Authorities (CRIAs) were established to promote economic revitalization in disadvantaged communities through the use of tax increment financing. Unlike EIFDs, CRIAs are specifically intended to address areas experiencing significant economic distress and may finance a broad range of revitalization activities, including affordable housing, infrastructure, brownfield remediation, and economic development.

California law requires that at least twenty-five percent of all tax increment revenues received by a CRIA be dedicated to affordable housing for low- and moderate-income households. As a result, CRIAs may provide a particularly valuable financing mechanism for jurisdictions seeking to combine neighborhood revitalization efforts with long-term affordable housing investment.

5.5 Affordable Housing Authorities
Legal Authority: Government Code §§ 62250–62262.

Affordable Housing Authorities (AHAs) provide local governments with a tax increment financing mechanism dedicated exclusively to affordable housing. Originally authorized by SB 5 (Stats. 2019, ch. 667) and subsequently recodified within the Government Code, AHAs allow participating jurisdictions to capture and invest tax increment revenues to support housing affordable to households earning up to 120 percent of Area Median Income.

Unlike broader economic development financing districts, AHAs focus exclusively on housing production, preservation, and related activities. This specialized purpose may make them particularly attractive for jurisdictions seeking a long-term local funding source dedicated solely to affordable housing.

5.6 Best Practices and Practical Guidance for Staff and Elected Officials
Tax increment financing tools are not one-size-fits-all. The most appropriate financing mechanism depends on a jurisdiction's existing redevelopment assets, economic conditions, infrastructure needs, housing priorities, and willingness to partner with other taxing entities. Elected officials should evaluate available tax increment financing options as part of a broader affordable housing financing strategy rather than viewing them as standalone funding sources.

Housing Successor assets, EIFDs, CRIAs, and Affordable Housing Authorities are often most effective when combined with housing trust funds, federal and state housing programs, and private investment. By layering multiple financing tools, jurisdictions can create more resilient and sustainable funding strategies capable of supporting affordable housing production, preservation, and infrastructure investment over many years.

Section 6: Key Eligibility Requirements, Application Processes, and Practical Tips

6.1 Federal Programs

CDBG: Entitlement communities receive allocations automatically upon submission of a Consolidated Plan (42 U.S.C. § 12705) and Annual Action Plan to HUD. Non-entitlement communities apply through HCD. All activities must meet a national objective, primarily benefiting low- and moderate-income persons. Key deadline: Consolidated Plans are typically due every five years, with Annual Action Plans due annually. Administrative costs capped at 20%.

HOME: Participating jurisdictions must submit a Consolidated Plan and Annual Action Plan. A 25% nonfederal match is required (reduced for communities in fiscal distress). All HOME-assisted units must serve households at or below 80% of AMI, with a portion at or below 60% of AMI. Commitment and expenditure deadlines are strictly enforced by HUD. 42 U.S.C. § 12750.

LIHTC: Developers apply to CTCAC. Local governments are not direct applicants but can significantly support applications through local funding commitments, land donations, and expedited entitlement processing. CTCAC issues annual allocation rounds for 9% credits; 4% credits are available year-round in conjunction with tax-exempt bond issuance. Compliance with income and rent restrictions is monitored for a minimum of 30 years. 26 U.S.C. § 42(h).

Section 8: Local PHAs administer the program. Voucher allocations are received from HUD; new increments are available through competitive NOFAs. PHAs must maintain administrative plans and comply with federal regulations at 24 C.F.R. Part 982.

6.2 State Programs

MHP, CalHome, NPLH, VHHP, IIG, AHSC, and Other HCD Programs: All are awarded on a competitive basis pursuant to NOFAs published by HCD. Applications are evaluated based on criteria such as readiness to proceed, leveraging of other resources, depth of affordability, and community impact. Key eligibility criteria: applicants must be local governments, nonprofits, or qualified developers (varies by program). Projects must serve households at specified income levels (typically 60% of AMI or below for rental programs). Continued funding for many of these programs depends on voter approval of the Veterans and Affordable Housing Bond Act of 2026 (SB 417) at the November 2026 general election.

CalHFA Multifamily Programs: Developers apply directly to CalHFA for permanent financing. CalHFA financing is often combined with LIHTC, HCD soft loans, and local funding to create a complete capital stack.

State Matching Grants for Local Housing Trust Funds (Health & Safety Code §§ 50842.1–50843.5): Eligible trust funds must have a dedicated revenue source. Applications are submitted to HCD.

6.3 Practical Tips

First, develop a local housing strategy that identifies the types of affordable housing most needed in your community and the funding sources best suited to those needs. Second, layer multiple funding sources — most affordable housing projects require a combination of federal, state, local, and private financing. Third, invest in staff capacity — applying for competitive state and federal programs requires dedicated staff with expertise in housing finance. Fourth, coordinate with your county, neighboring jurisdictions, and regional housing agencies to maximize regional impact and eligibility. Fifth, ensure compliance with the Housing Element Law, Government Code §§ 65580–65589.8, as jurisdictions with compliant housing elements are prioritized for certain state funding programs.

Conclusion and Recommended Next Steps

California's affordable housing crisis demands that cities use every tool at their disposal. The programs, financing mechanisms, and policy tools described in this white paper represent a substantial — though complex — toolkit for producing and preserving affordable housing at the local level.

To maximize the impact of these resources, elected officials should consider the following next steps:

First, conduct a comprehensive assessment of your jurisdiction's housing needs, including the number and types of affordable units required, the populations most in need, and the geographic areas best suited for development. Your jurisdiction's Housing Element, required under Government Code §§ 65580–65589.8, is the starting point for this analysis.

Second, establish or expand a local housing trust fund (Strategy One) with a dedicated, sustainable revenue source, and apply for state matching funds under Health & Safety Code §§ 50842.1–50843.5. Where your jurisdiction is too small to support a trust fund on its own, consider forming or joining a regional housing trust through a joint powers agreement under Government Code § 6539.1 to share administrative costs, pool capital, and compete more effectively for state and federal funding.

Third, adopt and refine local policy tools that encourage affordable housing (Strategy Two). Evaluate whether to adopt or update an inclusionary housing ordinance calibrated to local market conditions; confirm that your accessory dwelling unit ordinance meets — and ideally reduces barriers beyond — the state's ministerial-approval baseline under Government Code §§ 66310–66342; align your objective standards and staff procedures with the state laws requiring ministerial or streamlined approval of housing that includes an affordability component (Government Code §§ 65913.4, 65912.100 et seq., and the Density Bonus Law, § 65915); and use local soft-money loans to close project financing gaps.

Fourth, preserve the affordable housing you already have. Monitor assisted developments at risk of converting to market rate and the tenant and public-entity notice and opportunity-to-purchase rights triggered under Government Code §§ 65863.10–65863.13, and use trust fund or acquisition financing to acquire and preserve both at-risk deed-restricted units and naturally occurring affordable housing under Government Code § 65583.1.

Fifth, develop a diversified funding strategy that combines multiple federal, state, and local sources. Virtually no affordable housing development is funded from a single source; successful projects layer LIHTC equity, HCD soft loans, local housing trust fund dollars, and other subsidies into a complete capital stack. Because several of the state programs described in this guide depend on voter approval of the Veterans and Affordable Housing Bond Act of 2026 (SB 417) at the November 2026 general election, officials should monitor the outcome of that measure when planning multi-year funding strategies.

Sixth, as a supplemental local funding source, consider whether to create an Enhanced Infrastructure Financing District, Community Revitalization and Investment Authority, or Affordable Housing Authority to capture tax increment revenue for affordable housing purposes.

Seventh, invest in institutional capacity. Ensure that your jurisdiction has staff with expertise in housing finance, grant writing, and program compliance, or engage consultants and technical assistance providers to supplement staff capacity.

Eighth, engage your community. Affordable housing development requires political will, and elected officials play an essential role in building public understanding and support for affordable housing investments.

By understanding and strategically deploying the full range of tools described in this white paper, California's local elected officials can make meaningful progress in addressing the housing affordability crisis confronting their communities.

Summary Comparison Table of Key Programs

Program / Tool	Type of Funding/Tool	Funding Source	Eligible Applicants	Key Uses
CDBG (42 U.S.C. §§ 5301–5321)	Formula grants	Federal (HUD)	Entitlement cities, urban counties, states	Housing rehab, infrastructure, public services, homeownership
HOME (42 U.S.C. §§ 12721–12839)	Formula grants	Federal (HUD)	Participating jurisdictions, states, CHDOs	New construction, rehab, acquisition, tenant-based rental assistance
LIHTC (26 U.S.C. § 42)	Tax credits (equity)	Federal (IRS/CTCAC)	Developers (with local government support)	New construction, acquisition/rehab of affordable rental housing
Section 8 (42 U.S.C. § 1437f)	Rental subsidies	Federal (HUD)	PHAs, landlords, tenants	Tenant-based and project-based rental assistance
Choice Neighborhoods	Competitive grants	Federal (HUD)	Local governments, PHAs, nonprofits	Neighborhood revitalization, mixed-income housing
FHLB AHP (12 U.S.C. § 1430(j))	Grants/subsidized advances	Federal Home Loan Banks	Member institutions (with local partners)	Owner-occupied and rental housing
USDA Rural Housing (42 U.S.C. §§ 1471–1490)	Loans, grants, guarantees	Federal (USDA)	Rural communities, developers, homebuyers	Rural homeownership, rental housing, farm labor housing

Program / Tool	**Type of Funding/Tool**	**Funding Source**	**Eligible Applicants**	**Key Uses**
MHP (H&S Code §§ 50675–50675.14)	Deferred-payment loans	State (HCD)	Local governments, nonprofits, developers	New construction, rehab, preservation of rental housing
CalHome (H&S Code §§ 50650–50665)	Grants	State (HCD)	Local governments, nonprofits	Homebuyer assistance, owner-occupied rehab
IIG (H&S Code §§ 53545–53559)	Grants	State (HCD)	Local governments, developers	Infrastructure for infill housing
CalHFA Multifamily Permanent Loan Program (H&S Code §§ 51100, 51125)	Below-market loans	State (CalHFA)	Developers, owners pursuing acquisition / rehab projects (can be for-profit entities, nonprofits or local governments)	Multifamily financing
CalHFA Conduit Issuer Program (H&S Code §§ 51330-51332, 51350, 51365, 51374, 51478)	Bond Financing	State (CalHFA)	Developers, owners pursuing acquisition / rehab projects (can be for-profit entities, nonprofits or local governments)	Multifamily financing
Local Housing Trust Fund Matching (H&S Code §§ 50842.1–50843.5)	Matching grants	State (HCD)	Local housing trust funds	Affordable housing activities

Program / Tool	Type of Funding/Tool	Funding Source	Eligible Applicants	Key Uses
AHSC (PRC § 75200-75218.2, H&S Code §§ 39719.4)	Grants and loans	State (Cap-and-Trade)	Local governments, developers	Affordable housing near transit
EIFD (Gov't Code §§ 53398.50–53398.88)	Tax increment financing	Local	Cities, counties	Infrastructure, affordable housing
CRIA (Gov't Code §§ 62000–62208)	Tax increment financing	Local	Cities, counties	Revitalization, affordable housing (25% set-aside)
Affordable Housing Authority (Gov't Code §§ 62250 et seq.)	Tax increment financing	Local	Cities, counties	Affordable housing (up to 120% AMI)
Inclusionary Housing / In-Lieu Fees (Gov't Code §§ 65850, 65850.01)	Regulatory (units or fees)	Local/Private	Developers (mandatory)	On-site affordable units or fee payments to housing trust fund
Accessory Dwelling Units (Gov't Code §§ 66310–66342)	Regulatory (ministerial approval)	Local	Cities (ordinance), homeowners	Ministerial approval of ADUs/JADUs; naturally occurring affordable housing
Streamlined / By-Right Approval — SB 35/SB 423, AB 2011, SB 4, SB 79 (Gov't Code §§ 65913.4, 65912.100 et seq., 65913.16,	Regulatory (by-right approval)	Local/State	Cities (approval), developers	Ministerial/streamlined approval of housing with an affordability component

Program / Tool	Type of Funding/Tool	Funding Source	Eligible Applicants	Key Uses
65912.155–65912.161)				
Density Bonus (Gov't Code § 65915)	Regulatory (entitlement overlay)	Local/State	Developers	Density increase and incentives/concessions for affordable units
Preservation of At-Risk & NOAH Housing (Gov't Code §§ 65863.10–65863.13, 65583.1)	Regulatory (notice, right to purchase, acquisition)	Local/State	Cities, nonprofits, tenant associations	Preserve expiring-use and naturally occurring affordable units
Local Soft-Money / Gap Loans (local housing trust fund; HOME/CDBG; Housing Successor funds)	Loans (soft/deferred)	Local	Cities, housing trust funds	Gap financing to close project financing gaps
Homekey+ (H&S Code § 50675.1.1)	Grants	State (HCD) / Federal	Local governments, public agencies	Acquisition/rehab of properties for homeless housing
Surplus Land Act (Gov't Code §§ 54220–54234)	Regulatory (land disposition)	State	Local agencies disposing of surplus land	Priority disposition of public land for affordable housing

Appendix A: Glossary of Key Terms

AMI (Area Median Income): The midpoint of a region's income distribution, calculated annually by HUD. Federal and state housing programs use AMI thresholds (e.g., 30%, 50%, 60%, 80%) to determine household eligibility.

Affordable Housing: Housing for which the occupant pays no more than 30% of gross household income for housing costs, including rent or mortgage, utilities, and insurance.

CDBG (Community Development Block Grant): A federal formula grant program administered by HUD that funds a range of community development activities, including affordable housing. 42 U.S.C. §§ 5301–5321.

CHDO (Community Housing Development Organization): A nonprofit organization that meets HUD requirements and is eligible to receive a set-aside of HOME funds for affordable housing development. 24 C.F.R. § 92.2.

Consolidated Plan: A five-year strategic plan required by HUD as a condition of receiving CDBG, HOME, and other formula grant funds. 42 U.S.C. § 12705.

CRIA (Community Revitalization and Investment Authority): A tax increment financing authority created to promote revitalization of disadvantaged communities that must dedicate at least 25% of its tax increment revenues to affordable housing. Government Code §§ 62000–62208.

Density Bonus: An increase in allowable development density granted to developers who include affordable housing units in their projects, as required by Government Code § 65915.

EIFD (Enhanced Infrastructure Financing District): A special district authorized under Government Code §§ 53398.50–53398.88 that captures tax increment revenue for infrastructure and affordable housing.

Entitlement Community: A city or county that qualifies by population to receive CDBG funds directly from HUD.

Gap Financing: Supplemental funding, often in the form of soft loans or grants, that covers the difference ("gap") between total project costs and the amount financed by primary sources such as conventional loans and tax credit equity.

Housing Element: A required component of every city and county General Plan in California, setting forth the jurisdiction's policies and programs for meeting its share of regional housing needs. Government Code §§ 65580–65589.8.

In-Lieu Fee: A fee paid by a developer in lieu of constructing required affordable housing units on-site, typically deposited into a local housing trust fund.

LIHTC (Low-Income Housing Tax Credit): Federal tax credits allocated to states for the development of affordable rental housing. 26 U.S.C. § 42.

NOFA (Notice of Funding Availability): A public announcement by a government agency inviting applications for available program funds.

PHA (Public Housing Authority): A local government entity that administers federal public housing and Section 8 voucher programs.

Permanent Supportive Housing: Affordable housing combined with on-site supportive services (such as mental health treatment, substance abuse counseling, and case management) designed for persons experiencing chronic homelessness.

Tax Increment Financing (TIF): A public financing mechanism in which future increases in property tax revenue within a designated area are captured and reinvested in that area for public improvements or affordable housing.

Appendix B: Key Agency Contacts and Resources

Federal Agencies:

U.S. Department of Housing and Urban Development (HUD), Region IX (San Francisco): www.hud.gov

HUD CPD (Community Planning and Development) for CDBG and HOME: www.hud.gov/program_offices/comm_planning

Internal Revenue Service (LIHTC): www.irs.gov

Federal Home Loan Bank of San Francisco (AHP): www.fhlbsf.com

USDA Rural Development, California: www.rd.usda.gov/ca

State Agencies:

California Department of Housing and Community Development (HCD): www.hcd.ca.gov

California Tax Credit Allocation Committee (CTCAC): www.treasurer.ca.gov/ctcac

California Housing Finance Agency (CalHFA): www.calhfa.ca.gov

California Strategic Growth Council (AHSC Program): www.sgc.ca.gov

California Department of Veterans Affairs (CalVet): www.calvet.ca.gov

Other Resources:

California Housing Consortium: www.calhsng.org

National Low Income Housing Coalition: www.nlihc.org

Local Initiatives Support Corporation (LISC): www.lisc.org

Enterprise Community Partners: www.enterprisecommunity.org

Labor and Employment Litigation Update

Annual Conference 2026

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Labor and Employment Litigation Update

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Labor and Employment Litigation Update Fall 2026

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I. INTRODUCTION

In the last several months, California and Federal courts, and the Public Employment Relations Board ("PERB") have issued significant decisions impacting labor and employment law for public agencies. Several of these developments are particularly important for cities as employers.

The cases discussed in this update span a broad range of issues that public employers routinely encounter. The following sections highlight key developments in labor and employment law, organized into the following categories: (1) Discrimination, Harassment, and Retaliation; (2) First Amendment; (3) Labor Relations; (4) Public Records; (5) Retirement; and (6) Workplace Investigations.

CASES AND LEGISLATION

I. DISCRIMINATION, HARASSMENT, AND RETALIATION

Williams v. Legacy Health, 174 F.4th 1201 (9th Cir. 2026) – Healthcare Employer Could Deny Religious Accommodations Requests to Vaccine Requirement Based On Undue Hardship Defense

Legacy Health, a healthcare system operating eight hospitals, implemented a COVID-19 vaccination requirement in August 2021 during a surge. Nine employees in patient-facing healthcare positions requested religious exemptions from the vaccine requirement. Legacy Health denied the requests, concluding that allowing unvaccinated frontline workers would create an undue hardship, and ultimately placed the employees on leave and then terminated them.

The employees sued under Title VII alleging religious discrimination for failure to accommodate their religious beliefs.

The District Court granted summary judgment for Legacy Health, holding that accommodating the employees would have imposed an undue hardship. The employees appealed to the Ninth Circuit.

The Ninth Circuit upheld the District Court's decision. The evidence showed that accommodating employees would impose "outsize[d] risks" to Legacy's patients and staff, thereby "jeopardizing [Legacy's] ability to provide healthcare" in a safe and effective manner.

The Court reasoned that under *Groff v. DeJoy,* 600 U.S. 447 (2023), an employer establishes undue hardship by showing that a proposed accommodation would impose a substantial burden in the overall context of its business, not merely a de minimis cost. Legacy had demonstrated that exempting unvaccinated frontline healthcare workers during the Delta surge created realistic risks of employee illness, staffing shortages, transmission to coworkers, and infection of vulnerable patients.

Additionally, expert evidence established that masking, testing, and other safety measures were not adequate substitutes for vaccination in patient-care settings, and the employees presented no evidence to rebut that showing.

The Court rejected the employees' argument that Legacy had to individually evaluate every proposed accommodation, explaining that if no reasonable accommodation exists without undue hardship, Title VII does not require the employer to do so.

This case informs public agencies that employers may deny religious accommodation when they can demonstrate *with evidence* that the accommodation would create a realistic and substantial health, safety, or operational burden. The case also brings clarity that an employer does not have to establish that it engaged in good faith efforts if it can establish that <u>no</u> reasonable accommodation would avoid undue hardship.

Husband v. Target Corp., 120 Cal.App.5th 762 (2026) – Employer's Knowledge of Disability is Requisite for Disability-Related Claims

Daniel Husband, a Target employee with an undisclosed diagnosis of bipolar disorder, was terminated after two incidents in which he acted erratically, made irrational statements, yelled once, and frightened coworkers. Although supervisors believed he needed medical or psychological evaluation, Husband never informed Target of his diagnosis before his termination, and no medical provider or third party disclosed it. After his termination, Husband sued Target under the Fair Employment and Housing Act (FEHA) for disability discrimination, failure to accommodate, and failure to engage in the interactive process.

The trial court granted Target's motion for summary judgment. They found that Target did not have knowledge of Husband's disability when they terminated his employment. Husband appealed.

The question the 2nd District Court of Appeal decided on was whether an employer can be held liable under FEHA for disability discrimination or failure to accommodate when the employee never disclosed a mental disability and the employee's observed behavior that could be reasonably explained by causes other than a disability.

The Court upheld summary judgment for Target, meaning that an employer's knowledge of an employee's disability is a prerequisite to liability under FEHA, and Husband failed to show Target knew or should have known of his bipolar disorder.

The reasoning relied primarily on FEHA's requirements, under which liability for termination may arise only if the employer had knowledge of the employee's disability. Because Husband never disclosed his disability, his conduct would have needed to be reasonably interpreted *only* as evidence of a disability. Although Husband behaved erratically, he did not establish that there were no other reasonable explanations for his behavior.

Public agencies do not have to infer or diagnose an employee's health condition. Additionally, suggestion an employee seek help may not equate to making an inference that a disability is the only reasonable explanation for erratic or dangerous behavior. If there are other reasonable explanations, public agencies can carry on with termination without fear of being held liable for disability discrimination.

Brown v. Alaska Airlines, Inc., 2026 U.S. App. LEXIS 18364 (2026) (Certified for Publication) – Employer May Enforce Anti-Harassment Policies, But Summary Judgment Is Improper Where Evidence Suggests Religious Discrimination

Marli Brown and Lacey Smith, two Alaska Airlines flight attendants, sued Alaska Airlines and their union after they were terminated following comments they posted on the company's internal employee communications platform in response to Alaska's public support for the federal Equality Act. The Act is a proposed federal law that would expand civil rights protections to prohibit discrimination based on sexual orientation and gender identity.

Brown posted that the Equality Act would endanger the Christian church, suppress religious freedom, and eliminate conscience protections. Smith questioned whether a company could "regulate morality." Both employees alleged that Alaska terminated them because of their sincerely held Christian beliefs, in violation of Title VII and analogous state anti-discrimination laws. They also alleged that their union unlawfully participated in or acquiesced in the discriminatory treatment.

The district court granted summary judgment for Alaska and the union, concluding the employees were terminated for violating workplace anti-harassment policies rather than because of their religion. In their view, Brown's rationale for leaving her comments was based on universal human morals, and Smith's comment was not overtly religious. Therefore, religion could not have been the basis of termination because their motivations were not religious.

The Ninth Circuit reversed. The Court held that the plaintiffs produced sufficient evidence to create a genuine dispute of material fact as to whether Alaska's stated reason for termination was a pretext for religious discrimination. Although Alaska asserted that the employees were fired for violating workplace policies prohibiting discriminatory or harassing conduct, a reasonable jury could conclude those policies were used as a cover for terminating them because of their religious beliefs.

The Court emphasized that Brown's comments were facially religious, Alaska acknowledged their religious nature, and Brown repeatedly explained that her statements reflected sincerely held religious beliefs. Likewise, although Smith's comments were less overtly religious, Alaska investigated and disciplined her together with Brown, creating a factual dispute as to whether the company's explanation was genuine.

The Court also held that a reasonable jury could find the union attempted to cause, or acquiesced in, the terminations because of the employees' religious beliefs. Finally, the court held that the Railway Labor Act does not preempt the plaintiffs' state-law discrimination claims against the union.

This decision highlights that public employers may enforce workplace conduct policies, but they are not entitled to summary judgment where the evidence would permit a reasonable jury to conclude that the stated policy violation was a pretext for discrimination based on religion. Even when an employer identifies a facially legitimate reason for discipline, summary judgment is not given if there is evidence that the decision may have been motivated by an employee's protected religious beliefs rather than the asserted misconduct.

Decloedt v. RadNet Management, Inc., 2026 Cal. App. LEXIS 411 (2026)(Certified for Publication) – Under FEHA Sexual Orientation Related Harassment Can Establish Sexual Harassment

Trevor Decloedt sued his former employer, RadNet Management, Inc., his supervisor, and a coworker, alleging multiple employment claims under the Fair Employment and Housing Act (FEHA). These claims included discrimination, hostile work environment, sexual harassment, retaliation, and wrongful termination. Decloedt alleged a coworker repeatedly harassed him because he was gay by telling him that he "shouldn't be gay," that being gay was "sinning," threatening to kill him, pulling his hair, and engaging in unwanted physical contact.

He further alleged he repeatedly reported the conduct to management and human resources, but the employer failed to take any corrective action. RadNet ultimately terminated his employment. When RadNet moved to compel arbitration under the parties' employment arbitration agreement, Decloedt argued the action fell within the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA), which renders predispute arbitration agreements unenforceable for cases relating to sexual harassment disputes.

The trial court denied RadNet's motion to compel arbitration because it concluded that Decloedt's complaint alleged a sexual harassment claim under FEHA, which brought the case within EFAA. Radnet appealed.

The Court of Appeal affirmed. It held that harassment based on an employee's sexual orientation constitutes sexual harassment under FEHA because discrimination or harassment based on homosexuality necessarily constitutes harassment because of sex. Relying on *Bostock v. Clayton County*, 590 U.S. 644 (2020), the Court found that sexual orientation harassment falls within FEHA's prohibition against harassment because of sex.

The Court further held that Decloedt sufficiently alleged a plausible FEHA sexual harassment claim by alleging repeated anti-gay comments, threats of violence, physical aggression, unwanted touching, and management's failure to take corrective action. Because the complaint adequately alleged a sexual harassment dispute, the EFAA exempted the entire case from arbitration.

This decision provides important guidance for California employers engaging with sexual harassment claims, and in managing anti-harassment policies. Although public agencies do not require employees to sign arbitration agreements and EFAA is not applicable to public agencies, the case is important because it establishes that sexual harassment claims can be based on sexual orientation, which had not been established prior.

Adelanto Elementary School Dist. v. Krause, 2026 Cal. App. LEXIS 408 (2026)(Certified for Publication) - Employer's Right to Seek Workplace Violence Restraining Order Cannot Be Waived by Separation Agreement, But Can be Limited by First Amendment

The Adelanto Elementary School District sought a workplace violence restraining order (WVRO) on behalf of three employees against its former superintendent, Michael Krause. The employees alleged that over the course of two years Krause engaged in a pattern of harassing conduct. The conduct included: intimidating outbursts, repeated unprompted text messages, photographing employees without their knowledge, sending photos of those employees unprompted, following employees near their homes and in public, and other conduct that caused them to fear for their safety and seek mental health treatment.

After the District terminated Krause, the parties entered into a separation agreement containing a broad release of claims. Krause was later elected to the District's Board of Trustees. The District subsequently petitioned for a WVRO under Code of Civil Procedure section 527.8. Krause argued that the District had waived its right to seek a restraining order through the release contained in the separation agreement and that there was insufficient evidence of a future threat because he had not threatened violence.

The trial court granted the WVRO, finding that Krause engaged in a continuing course of harassment creating a reasonable probability of future harm. The court issued a four-year restraining order restricting Krause's contact with the protected employees and limiting certain conduct during Board meetings. Krause appealed.

The Court of Appeal affirmed the district court but modified two parts of the WVRO. First, it held that an employer's statutory right to seek a workplace violence restraining order on behalf of its employees is unwaivable under Civil Code section 3513 because the statute serves the fundamental public policy of protecting workplace safety for employees. The Court reasoned that allowing employers to waive this statutory remedy would undermine the Legislature's goal of preventing workplace violence and harassment.

Second, the court clarified that, following the 2023 amendments to Code of Civil Procedure section 527.8, an employer is no longer required to prove a reasonable probability of future violence or threats of violence. Instead, because the statute now additionally covers harassment, the future-harm requirement is satisfied by showing a reasonable probability that harassment will continue, even if the conduct does not rise to the level of violence or a credible threat of violence. The Court agreed with the trial court that there was substantial evidence supporting the restraining order based on Krause's repeated pattern of harassing conduct and his lack of remorse.

The Court modified the WVRO in two ways. It held that the provision prohibiting Krause, an elected Board member, from discussing the WVRO during public Board meetings was overbroad and violated the First Amendment because it prohibited more speech than necessary to prevent harassment. The Court also reduced the duration of the WVRO from four years to the statutory maximum of three years.

This decision provides important guidance for public employers seeking WVROs. It confirms that an employer's authority to seek a WVRO cannot be waived by a private agreement because the statute serves an important public purpose. It also establishes that, under the recently amended statute, employers need only demonstrate a reasonable probability of continued harassment to get relief. This may allow employers to intervene earlier before workplace misconduct escalates into actual threats or physical violence.

II. <u>FIRST AMENDMENT</u>

Reges v. Cauce, 162 F.4th 979 (9th Cir. 2026) – University Violated First Amendment Rights When It Disciplined Professor For His Mocking Land Use Acknowledgement In His Course Syllabus

A professor at the University of Washington (UW) had a statement in his syllabus that criticized the school's recommendation that formal land acknowledgments be included in course syllabi. The professor viewed UW's land acknowledgment, and the recommendation to include it in syllabi, as a political statement. In his syllabus, the professor included a mock land acknowledgment in his computer science syllabus. His version criticized the official acknowledgment and expressed his own political viewpoint.

This statement sparked a controversy on campus. UW asked him to remove his statement off the syllabus, stating that it created a "toxic environment." After refusing to remove the statement, UW had IT staff replace his syllabus on the course page. UW launched an investigation and withheld pay. Although the university ultimately imposed no formal sanctions, they concluded that the statement caused significant disruption. UW threatened that he could be disciplined if he used it again. The professor sued under 42 U.S.C. §1983, claiming UW retaliated against him and discriminated against his viewpoint in violation of the First Amendment.

The District Court ruled in favor of UW, reasoning that the university's interest in mitigating the disruption to university staff functions and student learning had outweighed the professor's need to voice public concern under the *Pickering v. Board of Education* standard.

The Ninth Circuit Court of Appeals reversed, holding that UW had violated the First Amendment by taking adverse employment action against the professor. The Ninth Circuit reasoned that his statement was protected academic speech, not government speech, because faculty control syllabus content and the statement expressed his personal views on a matter of public concern, not an official UW position.

Applying the *Pickering* balancing test, the court found that his interest in speaking outweighed the university's interest in avoiding disruption. His statement addressed a matter of public concern was therefore "core political speech that merits the highest First Amendment protection."

Because the university investigated Reges, withheld his merit pay during the investigation, reprimanded him, and threatened future discipline because of the viewpoint he expressed, the court concluded that the university engaged in both First Amendment retaliation and viewpoint discrimination.

Although the Ninth Circuit placed special emphasis on academic freedom in this case, it is relevant to all public employers who may wish to reprimand employees based on controversial statements that affect other employees or the public.

Public agencies should exercise caution, as the court held that investigations, reprimands, withholding merit pay during an investigation, and threats of future discipline may constitute adverse employment actions supporting a First Amendment retaliation claim, even absent termination or suspension.

Employers must show that their interest in maintaining workplace efficiency outweighs the employees' First Amendment rights under the Pickering balancing test. Employee speech should not be punished simply because coworkers or members of the public find it offensive.

Finally, public employers should not rely on speculation of fears that speech will harm morale and function. They should rely on some set of articulable and material facts that show real disruption to the workplace.

Joyner v. City of Atlanta, 170 F.4th 1320 (11th Cir. 2026) – Removal of Flextime Privilege Was Adverse Action that Could Support First Amendment Retaliation Claims

Atlanta Police Lieutenant Terry Joyner reported alleged "ticket fixing" by his supervisors to the FBI and the department's Office of Professional Standards. One week later, his supervisors removed his longstanding flextime privilege. He relied on this to work part time and have a second job. They required him to work on a fixed schedule. The change significantly reduced his ability to work a second job, cutting that income by at least two-thirds, and interfered with his ability to meet child custody obligations.

Joyner sued the City of Atlanta, alleging VII race discrimination, Title VII retaliation, First Amendment retaliation under 42 U.S.C. § 1983, and retaliation under the Georgia Whistleblower Act. The district court granted summary judgment on all three retaliation claims. It concluded that Joyner's Title VII retaliation claim failed because he could not establish a causal connection between his 2008 discrimination complaint and the City's 2014 promotion decision. The court also concluded that the loss of flextime did not constitute an actionable adverse employment action for purposes of Joyner's First Amendment and Georgia Whistleblower claims.

Joyner's Title VII race discrimination claim was the only claim that proceeded to trial. The jury returned a verdict in favor of the City of Atlanta, rejecting Joyner's claim that race motivated the decision not to promote him. Joyner appealed both the summary judgment rulings on his retaliation claims and some trial rulings relating to his race discrimination claim.

For the Title VII retaliation claims, the 11th Circuit Court of Appeal upheld that portion of the decision. Joyner had argued that the City of Atlanta refused to promote him to Captain in 2014 in retaliation for his complaints of racial discrimination made in 2008. However, the Court explained that there was no evidence offered to show that the decisionmaker had knowledge of the discrimination complaints. The Court found Joyner's claim based only on speculation. Indeed, the Court reasoned that "what could have happened is not evidence that creates a genuine issue of fact about what did happen; it's speculation, conjecture, and wishful thinking that doesn't stand a chance against unrefuted testimony going the other way."

Additionally, there was more than six years between the complaint and the denied promotion and there was no continuous pattern of retaliatory conduct sufficient to connect the 2008 complaint to the 2014 promotion decision. Joyner was unable to establish a finding of causation and, accordingly, the Court affirmed summary judgment for the City.

On the flip side, the 11th Circuit Court of Appeals decided that the loss of a long-used flextime privilege could constitute an adverse employment action that is sufficient to support a First Amendment retaliation claim and defeat qualified immunity. They reversed that portion of the district court's decision. The district court took a more literal view as to Joyner's loss of flextime pay. In their view, his salary, rank, and title remained the same, and the only loss was the flexibility of hours.

After viewing the facts in a light most favorable to Joyner, the 11th Circuit decided that the loss of flextime constituted a materially adverse employment action that could chill protected speech due to the loss of a second income and resulting in inability to comply with his child custody obligations. The court reversed the summary judgement on Joyner's claims.

This decision serves as a reminder to public employers that retaliation is not limited to termination or demotion. Taking away a meaningful workplace benefit can be enough to support a First Amendment retaliation claim if it would discourage a reasonable employee from reporting misconduct or engaging in other protected speech.

III. LABOR RELATIONS

City & County of San Francisco v. Public Empl. Rels. Bd., 121 Cal.App.5th 243 (2026) – Union Member Attorneys Were Not Eligible For Binding Interest Arbitration on the Issue of Just Cause Discipline and Termination Because the City and County's Charter Classified Them as At-Will

The Municipal Attorneys Association (MAA), comprised of 500 attorneys employed by the City, proposed contract provisions requiring just cause for discipline and discharge and requiring layoffs based on seniority. The City rejected the proposals, arguing they conflicted with the San Francisco Charter because city attorneys are exempt, at-will employees who serve "at the pleasure" of the appointing authority.

When the City refused to submit the proposals to binding interest arbitration after bargaining reached impasse, the union filed an unfair practice charge with PERB.

PERB concluded that the City's refusal to submit the proposals to binding interest arbitration constituted bad-faith bargaining under the MMBA. The City petitioned the Court of Appeal for a writ of extraordinary relief. The City appealed.

The Court of Appeal granted the City's petition, vacated PERB's decision, and held that the City did not commit an unfair labor practice by refusing to submit the proposals to binding interest arbitration.

The Court reasoned that although courts generally defer to PERB's interpretation of the MMBA, they do not defer to PERB's interpretation of a city charter. Instead, substantial deference is given to the City's longstanding interpretation of its own charter. In this case, the San Francisco Charter expressly provided that exempt employees, including city attorneys, serve at the pleasure of the appointing authority and may be terminated without cause. Additionally, the Charter excluded matters involving the civil service merit system from binding interest arbitration.

Public agencies should consider that charter cities have authority to preserve charter-based employment provisions (such as the at-will status of exempt employees) from alteration through binding interest arbitration. This case also clarifies that while PERB receives deference on interpreting the MMBA, courts have the final word on interpreting municipal charters, and a city's longstanding interpretation of its own charter is entitled to substantial deference.

Los Angeles County Professional Peace Officers Assn. v. County of Los Angeles, 119 Cal. App. 5th 1091 (2026) – Management Rights Clause Was Not a Clear and Unmistakable Waiver to Contract Out Services

The Los Angeles County Professional Peace Officers Association (PPOA) represented County security officers. The County decided to outsource some bargaining unit security work to a private contractor but refused to meet and confer with the union over the decision, arguing that the parties' Memorandum of Understanding (MOU) contained a management rights clause that waived the union's bargaining rights with respect to any “decision of any reorganization by the County.”

PPOA filed an unfair practice charge, asserting the County violated the Meyers-Milias-Brown Act (MMBA) by failing to bargain over the outsourcing decision.

The Los Angeles County Employee Relations Commission (ERCOM) hearing officer concluded the MOU contained a clear and unmistakable waiver of the union's right to bargain over outsourcing. The superior court agreed and denied PPOA's petition for writ of mandate. PPOA appealed.

The Court of Appeal reversed and held that the management rights clause did not constitute a clear and unmistakable waiver of the union's statutory bargaining rights for three main reasons, and the County was required to meet and confer before outsourcing bargaining unit work.

First, the Court found that the article in dispute, read as one, did not contain an express waiver of PPOA's statutory right to meet and confer over outsourcing decisions. Although the article specifically addressed transfers of functions to public and private entities, it required only that the County notify PPOA when it entered into an agreement involving the transfer of bargaining unit work and that, “[w]hen a Department's Request for Proposal is approved by the Chief Executive Officer, the Labor Relations Office will arrange to meet with representatives of PPOA to advise them of this action within five (5) days.” The Court concluded that these provisions discussed outsourcing but “sa[id] nothing about the statutory right at issue,” as they did not mention the meet-and-confer process or state that PPOA was waiving its statutory rights.

Second, the Court rejected the County's reliance on this sentence: “Management shall have no obligation to negotiate the decision of any reorganization by the County during the life of this agreement.” The Court held that this language did not expressly reference the MMBA or PPOA’s statutory right to meet and confer regarding outsourcing decisions.

Third, the court concluded that the clause could reasonably be interpreted as preserving only the County's preexisting managerial authority under Government Code section 3504 to make fundamental organizational decisions, rather than waiving bargaining over outsourcing.

The Court further held that a public employer seeking to rely on an MOU waiver of bargaining rights must identify contract language that clearly and unmistakably addresses the specific management action at issue. The article of the MOU at issue was not clear, and there was no extrinsic evidence offered to show unmistakability of waiver. General management-rights clauses and broad references to reorganization may not be enough to avoid bargaining over outsourcing decisions.

Public agencies should be cautious to rely on general management rights clauses to avoid bargaining over outsourcing decisions. Any waiver of a union's statutory right to meet and confer under the MMBA must be clear, unmistakable, and expressly stated.

County of San Diego, PERB Decision No. 3006-M (Feb. 17, 2026) – Release Time May Need to Be Included for Calculation of Overtime

After Teamsters Local 986 became the exclusive bargaining representative for two San Diego County bargaining units, the County refused to count union bargaining release time as hours worked for purposes of determining overtime eligibility. The County explained that the existing Memoranda of Agreement and its Compensation Ordinance excluded union release time from overtime calculations. Teamsters filed an unfair practice charge, arguing that this practice violated Government Code section 3505.3, which requires bargaining representatives to receive release time "without loss of compensation or other benefits."

PERB issued a complaint, and the parties submitted the case on a stipulated record directly to PERB Board for decision.

PERB decided in favor of Teamsters and held that Government Code section 3505.3 requires bargaining release time to be provided without loss of compensation or benefits, which includes credit toward overtime eligibility.

PERB reasoned Government Code 3505.3 guarantees employees release time without loss of compensation or other benefits, meaning employees must receive the same compensation they would have earned had they worked their regular schedule. Refusing to credit bargaining release time toward overtime eligibility results in reduced compensation for employees who otherwise would have earned overtime.

This decision is consistent with PERB's earlier Riverside I and Riverside II decisions that employees must be made whole for compensation lost because of protected release time.

Additionally, PERB required that the County make affected employees whole, with 7% interest (from date of harm to date of payment), for lost overtime compensation.

Public agencies should be cautious about relying on collective bargaining agreements, ordinances, or history of past practices to reduce compensation pertaining to protected bargaining release time. The right to receive payment in this situation is non-waivable, and any contract contrary to the following would be unenforceable as a matter of law.

IV. <u>PUBLIC RECORDS</u>

City of Fresno v. Superior Court, 119 Cal. App. 5th 418 (2026) – Records Related To "Great Bodily Injury" Are Broader Than "Serious Bodily Injury"

On March 27, 2023, the ACLU submitted a CPRA request to City seeking public records regarding the City of Fresno Police Department's use of police K-9's involving use of force incidents. Specifically at issue here, was the request for "all records relating to the report, investigation, or findings of a K-9 incident involving use of force resulting in death or great bodily injury."

The City produced some records but withheld others, arguing that only incidents involving "serious bodily injury" were subject to disclosure under Penal Code section 832.7. The ACLU contended that the statute requires disclosure whenever an incident results in "great bodily injury," which it argued has a broader meaning.

The Fresno Superior Court ruled in favor the ACLU and ordered the City to disclose records involving incidents that resulted in "great bodily injury." The City appealed.

The City's principal argument was that the phrase "great bodily injury" in Penal Code section 832.7 should not be interpreted according to its well-established meaning in Penal Code section 12022.7 ("a significant or substantial physical injury"). Instead, the City argued that it should be construed more narrowly to mean "serious bodily injury" as defined in Government Code section 12525.2 which is a much higher threshold.

The Court of Appeal upheld the Superior Court's decision and rejected the City's narrow statutory interpretation. The Court reasoned that the statutory language is clear, so there was no reason to adopt the City's narrower definition of "serious bodily injury." The Legislature intentionally used the phrase "great bodily injury," a term with an established meaning in California law. The Court also considered that legislative history supported a broad interpretation favoring public access to law enforcement records under the CPRA. The Court reasoned that adopting the City's interpretation would improperly limit the transparency intended by the Legislature.

Police departments should be cautious when withholding use-of-force records, as they must evaluate injuries under the broader "great bodily injury" standard rather than a narrower "serious bodily injury" standard.

Voice of San Diego v. San Diego Unified School District, 120 Cal.App.5th 923 (2026) – While There is No Bright Line Rule for Production, Agency Must Make Records "Promptly Available"

Voice of San Diego, a nonprofit news organization, and its editor-in-chief sued the San Diego Unified School District, alleging the District routinely violated the California Public Records Act (CPRA) by taking more than one year to produce public records in response to requests. They sought to enjoin the District from using public funds to maintain what they alleged was an unlawful practice of delaying disclosure of public records. The plaintiffs argued that the CPRA's requirement that records be made "promptly available" generally meant agencies must produce records within days or a few weeks after determining the records were disclosable.

The trial court entered judgment in favor of the District, finding that Voice failed to prove the District maintained an unlawful policy or practice of delaying or withholding records. Voice appealed. In their view, Voice sought records spanning long periods of time and requested multiple categories of documents, making them much more burdensome than narrow requests. This meant that "promptly" did not mean immediately.

In this case, the California Court of Appeal considered whether the CPRA imposes a fixed deadline for producing public records after an agency determines they are disclosable and whether the District's record production practices violated the Act.

The Court held that the CPRA does not establish a bright-line rule for a deadline for producing records. Instead, whether records are made "promptly available" is a fact-specific inquiry based on a variety of factors. Appropriate factors include "the specificity and breadth of the request, the nature and location of the records sought, the volume of data to be searched, the storage medium that must be accessed, the level of review required for any exemptions and redactions, and the complexity of the request; as well as the size, scope and complexity of the business or activities of the agency responding to the request." Additionally, it would be appropriate to consider whether external circumstances beyond the agency's control impacted its ability to respond, such as a cyberattack on its systems or a global pandemic. The Court further concluded that substantial evidence supported the trial court's finding that the District did not maintain an unlawful practice of delaying or withholding public records, and it affirmed the judgment.

This decision provides guidance for California public agencies by highlighting that the CPRA's requirement to make records "promptly available" is flexible rather than subject to a rigid standard. The legal standard to takeaway is that compliance will be evaluated on a case-by-case basis, balancing the public's right of access with the practical burdens imposed by individual records requests.

V. <u>RETIREMENT</u>

Monroe v. Public Employees' Retirement System, 119 Cal. App. 5th 37 (2026) – Employee's Resignation in Lieu of Termination Precluded His Disability Retirement

A parole agent with the California Department of Corrections and Rehabilitation (CDCR), applied for service retirement pending disability retirement while under investigation for misconduct involving a parolee's family member. Before the disciplinary process concluded, CalPERS processed his service retirement application. CDCR later determined that Monroe had retired under unfavorable circumstances and withdrew its pending dismissal. CalPERS denied his disability retirement application, finding his separation from employment resulted from misconduct rather than disability.

The parole officer petitioned for a writ of mandate to reverse the Board's decision. The trial court denied his petition.

The Court of Appeals upheld, noting that petitioner's retirement arose out of unfavorable circumstances. The Court explained that disability retirement is intended to be a temporary separation from employment, with the possibility that the employee may later return to work if no longer disabled.

In this case, the court found it did not matter whether Monroe technically retired before his dismissal became effective because he left employment while under investigation for misconduct and had no right to return.

The decision reinforces that eligibility for disability retirement depends on preserving the employment relationship. Public employers and employees should recognize that a service retirement or resignation while disciplinary proceedings are pending may permanently foreclose disability retirement benefits if it constitutes a complete severance of employment.

VI. WORKPLACE INVESTIGATIONS

Paknad v. Superior Court, 119 Cal. App. 5th 1256 (2026) – Employer Waived Attorney-Client Privilege by Putting Investigation at Issue During Litigation

Michelle Paknad sued her former employer, Intuitive Surgical, alleging sexual harassment, gender discrimination, and retaliation. Before litigation, the company hired outside counsel to investigate her complaints and later relied on the thoroughness and independence of those investigations as part of its defense. Paknad sought production of the attorney's investigative reports and supporting materials, but Intuitive asserted attorney-client privilege and attorney work product protection over portions of the documents

In an earlier proceeding, the Court of Appeal held that Intuitive waived privilege by placing the adequacy of its investigation at issue and directed the trial court to conduct an in-camera review to determine whether any protection remained. On remand, the trial court permitted extensive redactions. Paknad filed a second writ petition challenging those redactions.

The question for this proceeding was when an employer relies on the adequacy of an attorney-conducted workplace investigation as a defense, whether that waives attorney-client privilege and attorney work product doctrine over the investigation’s findings.

The Sixth District Court of Appeal held in favor of Paknad, finding that when a party affirmatively defends themselves on the grounds that an investigation is of quality, they waive attorney-client privilege and attorney work product protection as to the findings and contents related to the investigation. The Court found the trial court erred in not determining whether or not the investigation fell within the scope of the employer’s waiver.

This means that a party cannot use an investigation as both a sword and a shield. If a party relies on it to defend a case, they cannot prevent the other party from examining the investigation for themselves.

This decision warns employers that relying on the thoroughness of an attorney-led workplace investigation as a defense may require disclosure of otherwise privileged investigative materials. Attorneys and public agencies should think carefully about using an attorney-led investigation as an affirmative defense if they do not wish the contents to be available to opposing parties.

Gearing Up for Stricter E-Bike Laws: A Playbook for Cities

Annual Conference 2026

City of Carlsbad

Gearing up for stricter e-bike laws

A playbook for cities

By: City of Carlsbad staff
July 2026

League of California Cities
Annual Conference and Expo

Gearing up for stricter e-bike laws: A playbook for cities

By City of Carlsbad staff

Early efforts to address e-bike safety

Between 2019 and 2022, the City of Carlsbad experienced an alarming 233% increase in collisions involving bikes and e-bikes, coupled with significant community concerns about the reckless behavior of young riders. As is the case with many new technologies and cultural shifts, state laws had not kept pace, leaving Carlsbad police officers with limited e-bike enforcement options. City leaders needed to find an effective solution to this public safety crisis.

E-bike concerns were not new to Carlsbad. As with cities across the country, e-bike use had increased dramatically, especially among tweens and teens unfamiliar with the rules of the road. Carlsbad's hilly terrain made e-bikes especially popular. When more cars returned to city streets post-pandemic, conflicts emerged.

In early 2022, the City Council decided to make Carlsbad the first city in the region to pass its own e-bike safety laws, giving the Police Department greater latitude in citing reckless and unsafe behavior. The new law also let first-time offenders take a city-provided e-bike safety course in lieu of paying the fine, addressing community concerns about younger riders' lack of familiarity with basic traffic laws. Yet, in spite of these efforts, during the first summer season after COVID restrictions lifted, collisions involving bikes and e-bikes reached an all-time high.

Then, in August 2022, tragedy struck. Two riders tragically lost their lives within a 10-day period on Carlsbad streets, including a young mother riding with her toddler. The city was days away from the start of a new school year, which would put hundreds more e-bike riders on the road. The City Manager determined conditions of extreme peril imminently threatened public safety, circumstances that provided the authority to proclaim a local emergency on traffic safety.

The city's Emergency Operations Center was activated on Aug. 23, 2022. City staff were immediately redeployed to provide an unprecedented level of focus and resources to address this public safety threat, while engaging the entire community in the effort. Staff analyzed data to develop a heat map of high collision areas, which helped focus efforts in areas with the highest rates of collisions. Staff deployed message boards, increased enforcement and added green paint treatments to those locations as quickly as possible.

The City Council ratified the emergency on Aug. 30, 2022, and provided $2 million in funding to the city's emergency response. The city launched a Safer Streets Together program, which followed the "three Es" approach to enhance traffic safety: education, engineering and enforcement.

Education

The city immediately launched a public awareness campaign, partnering with local schools to focus on educating parents and young riders. The local emergency declaration drew regionwide and national attention, with the initial announcement generating nearly 100 news stories reaching more than 1 million people. As part of the Safer Streets Together program, the city held 32 traffic safety events at local schools, created 42 video public service announcements and held three parent-focused safety trainings.

Engineering
The city's Transportation Department was already evaluating city streets to make safety improvements, thanks to a mobility plan approved by the City Council in 2021. As part of the Safer Streets Together program, the city's Transportation team completed more than 100 road projects, added 43 green bike lane segments, adjusted 32 crosswalk signals in areas with high volumes of pedestrian traffic and advanced four Safe Routes to School plans.

Enforcement
The Carlsbad Police Department redeployed traffic enforcement officers to create a highly visible presence around schools in time for the first day of school. During the year-long traffic safety emergency, the Carlsbad Police Department made 284 DUI arrests and issued more than 8,000 traffic warnings or citations, across all modes of travel.

However, e-bike specific enforcement efforts proved more challenging as classification types, popularity and ridership continued to expand.

The emergency declaration ended in September 2023, at which time collisions involving e-bikes had dropped 18% over the course of the previous year. While the emergency itself was officially ended, much of the work identified in the Safer Streets Together plan continued, including efforts to explore legislation that could further enhance e-bike safety.

Carlsbad co-sponsors AB 2234, allowing San Diego County cities to establish a minimum age of 12 for e-bike riders

When the city asked for community input before launching the Safer Streets Together program in 2022, one of the top requests was to require licenses or establish a minimum age for riding e-bikes. At that time, licensing and minimum ages could only be enacted at the state level. While the local laws, coupled with the city's Safer Streets Together program, had made an impact, it was clear that legislative action was needed to support safer use of e-bikes in the city and across California.

The City of Carlsbad's legislative team worked with Assemblymember Tasha Boerner to sponsor e-bike safety legislation. Through the committee review process, Assembly Bill 2234 was narrowed to be a San Diego regional pilot program rather than a statewide requirement. The program grants cities within San Diego County, as well as the county in unincorporated areas, the authority to adopt an ordinance prohibiting children under 12 years of age from operating a Class 1 or Class 2 electric bicycle.

Provisions in AB 2234, which sunsets on Jan. 1, 2029, include:

- Any prohibition adopted must be phased in with a 60-day period during which violations result only in a warning. After that, violations may be cited as infractions punishable by a $25 fine.
- Parents or guardians of minors in violation are jointly and severally liable for the fine.
- Fines may be waived if proof is provided within 120 days that the rider completed an approved e-bike safety and training course.
- Jurisdictions adopting such an ordinance must administer a public information campaign for at least 30 days before the prohibition takes effect and submit a detailed report to the Legislature by Jan. 1, 2028, outlining enforcement data, crash statistics and other required information.

In January 2028, participating cities will share their results of the new laws with the legislature, which will then decide next steps. That could include new legislation to expand the pilot program, change it or roll it out statewide.

Data informs a new 2026 City of Carlsbad e-bike ordinance

In spring 2025, the City Council voted to seek the public's input on prohibiting anyone under age 12 from riding e-bikes. The city determined that the Traffic Safety & Mobility Commission would hold a public hearing during a special meeting on Sept. 16, 2025, and the feedback would then be shared with the City Council.

To help inform the discussion at the commission meeting, city staff analyzed the latest local data, reviewed existing enforcement and education practices and conducted extensive community outreach.

Carlsbad collision and injury data

Staff reviewed historical collision data between 2022 and 2025, which shows:

- 204 total e-bike collisions
- E-bike collisions involving riders under age 12 occurred in 2022, 2023 and 2024
- 49% of e-bike collisions in this time period involved youth ages 12 to 17
- 42% involved adults
- 4% involved youth under age 12
- Riders under age 12 were at fault in 7% of the 127 collisions where fault could be assigned

A review of the city's collision data for the most recent three-year period revealed the following trends for e-bike riders aged 12 and under:

- 2023: 4 collisions, all involving minor injury, with 1 requiring a medical intake
- 2024: 4 collisions, all involving minor injury, with 1 requiring a medical intake
- 2025: 0 collisions involving injury

Review of enforcement and education practices
In addition to analyzing collision data, staff also reviewed current enforcement and education practices related to existing local e-bike laws.

Since adopting local regulations, the city has actively enforced its laws and adapted operations as e-bike rider behaviors have evolved. As of Sept. 16, 2025, when the city's Traffic Safety & Mobility Commission met to discuss the potential of adopting a minimum age for riding e-bikes, enforcement efforts had resulted in more than 180 e-bike citations and 230 warnings. Citations and warnings were issued for violations including running red lights, failing to stop at stop signs, riding on sidewalks and engaging in hazardous riding behaviors.

The city's enforcement strategy combines both routine patrols and targeted operations.

- Routine "enforcement blitzes" focus on high-visibility patrols in known problem areas, while "focused deterrence" operations target large groups of riders, high-speed violators and repeat offenders.
- Motor officers and field patrols provide daily enforcement coverage, with special attention given to schools, coastal areas and commercial zones.
- The city also monitors social media to identify planned group rides and habitual violators, allowing enforcement resources to be deployed proactively.

Education has been a key component of the city's approach. Current and previous efforts have included:

- Hosting more than 20 bicycle safety courses with over 1,500 students and parents.
- Working with school districts to develop bike safety or permit programs for students.
- Regularly sharing information on e-bike laws and safety tips through city communication channels.
- Distributed more than 100 helmets through an Office of Traffic Safety grant.

Community outreach
The city implemented a community outreach plan to notify the community and interested stakeholders, including parents of school-aged children, of the potential minimum age requirement and how to provide input. Outreach strategies included:

- School outreach, including emails for parents and flier distribution via education platforms
- Emails to interest lists
- City Manager's Update newsletters, news releases and social media posts
- Posters at city facilities
- Information at bike and e-bike safety classes led by the Carlsbad Police Department

The city received more than 550 emailed comments leading up to the commission meeting.

- Most comments expressed support for a minimum age of at least 12 years old
- Many requested the city consider additional rules and restrictions beyond what AB 2234 includes, such as licensing and insurance requirements for e-bikes and expanding the e-bike minimum age above 12.
- Some were opposed to the minimum age, requesting the city focus on education instead

In addition to recommending the City Council adopt an ordinance prohibiting children under age 12 from riding e-bikes, the commission also voted to recommend the City Council lobby for state legislation that would give cities more flexibility to adopt stricter rules.

Considering additional recommendations

After the City Council directed staff to seek the public's input on prohibiting anyone under age 12 from riding e-bikes, in summer 2025, the City Council also directed staff to develop recommendations for enhanced enforcement tools that would maintain public safety and address aggressive e-bike riding behavior, particularly among youth.

In December 2025, staff returned with those recommendations for additional new rules that could strengthen Carlsbad's approach and adjustments to clarify existing Carlsbad-specific e-bikes laws.

After reviewing community input and recommendations from staff and the city's Traffic Safety & Mobility Commission, the City Council asked staff to draft an ordinance for their review in early 2026.

Carlsbad adopts stricter e-bike safety laws

On Feb. 24, 2026, the Carlsbad City Council adopted a local ordinance with key focus areas to address specific e-bike issues in the community, including:

1. **Minimum age to operate an e-bike.** Anyone operating a class 1 or class 2 e-bike must be at least 12 years old, as allowed by AB 2234.

2. **Consequences for reckless riding.** Safety is the city's top priority. When a minor breaks the rules and creates an immediate or substantial public safety risk, their e-bike may be impounded. The minor must complete an in-person safety course to retrieve the e-bike, and a parent or guardian must be present when the e-bike is released. The Police Department is authorized by the Vehicle Code to impound e-motorcycles, which are not street legal.

3. **Clarification on riding safety.** In 2022, Carlsbad became the first city in San Diego County to pass local e-bike safety laws. The city has gathered more data and community input as e-bikes have continued to gain popularity, and updated the laws to more clearly specify these details:

    - Riders must go at a safe speed for the conditions, factoring in weather, whether pedestrians are present and how quickly other traffic is moving.
    - Riders under 18 years old must wear a properly fitted and fastened helmet.
    - Only e-bikes designed for passengers can carry more than one rider.
    - Parents are responsible for knowingly allowing their children to commit violations.

4. **E-bike restrictions at parks.** E-bikes are prohibited in two city parks, based on service calls received by the Police.

Phased implementation plans prioritized education and warning periods before enforcement

After the new ordinance was adopted, the city took a phased approach to implementation to help raise awareness and focus on education before issuing citations.

- Feb. 24, 2026: City Council adopts new ordinance
- Feb. 25: 30-day public information campaign began to raise awareness
- March 26: New laws took effect, beginning with a 60-day warning period
- May 25: 60-day warning period ended

Since May 26, when the new laws took effect, the Police Department has continued to focus on education while issuing warnings or citations, or impounding e-bikes and e-motorcycles when appropriate. During the first six weeks following the end of the warning period, Carlsbad Police Officers:

- Conducted 93 education focused stops
- Issued 53 written warnings
- Issued 20 citations
- Impounded 40 e-bikes and e-motorcycles

In addition to the new laws, the Police Department launched an online reporting portal on June 17, 2026, to let residents report unsafe riding directly to the Traffic Unit. As of July 6, 2026, two and a half weeks after the portal was launched, the Police Department had received 12 community reports through the portal. The reports received so far have helped identify locations with ongoing reckless riding and provide leads on repeat offenders.

Sources and more information

View Assembly Bill 2234
View an overview of the City of Carlsbad's e-bike laws
View the City of Carlsbad ordinance adopted on Feb. 24, 2026
View the Sept. 16, 2025, Traffic Safety Mobility Commission staff report
View the Dec. 2, 2025, Carlsbad City Council staff report

Construction Delivery Methods: How to Choose?

Annual Conference 2026

Choosing the Right Delivery Method

Introduction.

Many California public agencies develop large building and infrastructure projects infrequently and agency staff and the attorneys representing these agencies may have limited experience with the options available to procure design and construction services. Over the past several years the legislature has authorized new procurement methods for local agencies and in some cases expanded the range of local agencies that can take advantage of these methods.

The default approach for public design and construction is generally design-bid-build, where plans and specifications are prepared by licensed architects or engineers hired by the agency, the work is put out to competitive bid among contractors, and the lowest, responsible bidder is selected to construct the work.[1] For many decades, public construction projects proceeded on this design-bid-build model.

Starting in the 1990s, the Legislature began authorizing alternative project delivery methods on a limited basis for certain agencies and projects. In the 2000s, the legislature added authority for construction manager at risk delivery methods, and then in 2014 authorized local agency design-build projects through SB 785. In 2022, the legislature passed SB 706 to authorize local agency progressive design-build, which has some significant differences from the earlier design-build statute. Public agencies may be able to utilize these procurement methods and even public-private partnerships that may allow financing and flexibility outside of the Public Contract Code. The local agency procurement landscape today is for more complex and can require an investment of time to decipher.

This paper provides a brief overview of the available procurement methods, key reasons they offer an alternative to design-bid-build, provide you with a working understanding of each method, and provide a few practical considerations for a public agency evaluating procurement methods.

Procurement Considerations.

The design-bid-build delivery method lets a public owner secure competitive pricing on a defined scope of work and, in concept, should provide the owner with the lowest price and a commitment from the contractor to complete the work within the time specified. In practice, design-bid-build does not always result in certainty on time and price. Some of the reasons for this lack of certainty are addressed in the alternative delivery approaches.

First, in design-bid-build, the contractor is given a set of drawings and specifications and a relatively short period of time to price the work. The Contractor is unlikely to make assumptions or draw inferences from the design and will bid only what is shown. Because the procurement is price-competitive, a Contractor may feel pressure to adjust its bid pricing

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1. The Government Code requires a public entity's engineer to prepare and file either complete and accurate plans and specifications or a work authorization describing the work to be performed, together with an estimate of the cost thereof, prior to the commencement of the work. Failure to comply with this requirement is a misdemeanor. (Gov. Code §§ 4004, 4007). These provisions effectively require design-bid-build in the absence of an express authorization under some other provision of law.

downward to secure the contract (to be the lowest bidder). The outcome is often that requests for additional compensation by the contractor (in the form of change requests and/or) claims become part of the design-bid-build process.

Second, in design-bid-build, when issuing plans and specifications for bidding, the agency owner warrants to bidders that the plans and specifications are complete and accurate. This warranty concept is often referred to as the *Spearin* doctrine after the case *United States v. Spearin* (1918) 248 U.S. 132, where the Supreme Court awarded a contractor damages after it constructed a non-functioning dry dock and sewer based on faulty plans and specifications.[2] However, the agency owner receives no corresponding warranty of accuracy/completeness from its project designers (architects/engineers), who will generally be held responsible for errors in plans and specifications only on a showing that the designers' work fell below the standard of care. The result is that the owner may be faced with a liability gap if the project design documents do not satisfy its legal warranty to the contractor.

Third, in design-bid-build, the public owner has limited freedom to select a contractor. The lowest, responsible bidder[3] must generally be awarded the work. Prequalification statutes may allow an agency to screen potential bidders based on qualification criteria, but on design-bid-build projects public owners generally cannot weigh non-price factors when making the selection. On certain projects a public owner may prefer to consider and give more weight to qualifications, past experience with similar projects, proposed teams, and proposed work plans, rather than price alone.

These three considerations are a significant motivator for public owners to look for alternatives to design-bid-build.

Construction Manager At-Risk; CM/GC Delivery Method

The Construction Manager At-Risk[4] ("CMAR") delivery method allows the owner to engage a contractor to provide both preconstruction services and general contracting services for construction. The CMAR is typically engaged while the architect/engineer is still developing the design. When the design is approximately 60% complete the CMAR provides preconstruction review of the design to offer a 'contractor's eyes' on schedule, materials, means and methods of construction, and other items that should make the project more efficient and less costly during construction. A second review is typically conducted when the design is 90% complete. The CMAR will also break up the work into trade packages for subcontractor bidding.

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2. This doctrine is reflected in part in Pub. Cont. Code § 1104 provides in part that "[n]o local public entity, charter city, or charter county shall require a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, except on clearly designated design build projects."

3. The term "responsible," as applied to bidders, is defined in Pub. Cont. Code § 1103, which defines a "Responsible Bidder" as "a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract."

4. This approach is also referred to as Construction Manager/General Contractor (CM/GC). Pub. Cont. Code § 20146 authorizes counties to utilize construction manager at risk for certain project types and is an example of enabling legislation for this delivery method.

The CMAR develops a Guaranteed Maximum Price ("GMP") for the work based on the scope of work and schedule. The GMP is typically assembled from subcontractor estimates or bids, the CMAR's own expected costs for general conditions and general requirements, and an allowance for clarifications, profit and contingencies. If the GMP is acceptable to the owner, the parties typically execute a change order incorporating the GMP into the contract and the CMAR begins construction.

This delivery method addresses two of the three procurement considerations noted above. First, the CMAR has much more significant time to evaluate the design, to provide feedback and input that may result in changes to the design, and an opportunity to develop a GMP over time with this knowledge. As a result, the owner's price risk may be reduced as the GMP is expected to accurately reflect the scope of work based on the schedule.

The owner can also consider the use of an incentive contingency, often 3% of the GMP. If changes occur during construction that could have been avoided through the CMAR's preconstruction work, the costs to pay for the change are drawn from the contingency. Any remaining contingency may be available to the contractor at project end. This may act as an incentive for the contractor to carefully perform its preconstruction services.

Second, most statutes authorizing CMAR allow for contractor selection on a 'best value' basis, meaning a public owner can consider non-price factors.[5] The owner can consider factors like the contractor's proposed team, its proposed work plan, qualifications and past projects, and performance in interviews. The public owner can develop a scoring system that weighs certain factors greater than others based on its needs.

The CMAR delivery method does not resolve the owner's *Spearin* risk but in theory should reduce the likelihood of such claims. The CMAR's constructability review is generally within the scope of its license as a general contractor and is not equivalent to a peer review by a licensed architect or engineer. However, early engagement of the CMAR and the CMAR's participation in preconstruction services should minimize CMAR contentions that it misunderstood the scope or work or priced only what was shown.

Design-Build Project Delivery: Local Agency Design-Build Act

The concept in design-build procurement is that the design builder – often a contractor/design firm team – assumes responsibility for both design and construction of the project. This contrasts with design-bid-build, where the owner separately contracts with the design firms and with the contractor.

The Local Agency Design-Build Act (the "Local Agency Act") became effective January 1, 2015.[6] The local agency prepares a set of documents setting forth the scope and estimated price of the project, which include performance specifications and plans that must be prepared by

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5. See, e.g., Pub. Cont. Code § 20146(b)(1): "'Best value' means a value determined by objective criteria related to the experience of the entity and project personnel, project plan, financial strength of the entity, safety record of the entity, and price."

6. Pub. Cont. Code § 22164.

licensed design professionals.[7] In practice, these initial plans and specifications are referred to as 'bridging documents' because they bridge the gap between conceptual ideas and more definitive design. Bridging documents are typically prepared to 35%, complete enough for the public owner to have control over major design decisions but still leaving significant room for the design-build team to use its skills and expertise to complete them.

For procurements under the Local Agency Act, the public owner engages in a two-step process to select a design-build team. First, the agency issues a request for qualifications to either pre-qualify or shortlist design-build teams for final selection. The request for qualifications must set forth information regarding the project, the procedure for selection of a design-build team, and the factors the agency will use in making the selection. Prequalification allows the owner to secure a bench of firms that will submit proposals and is typically scored on a 'pass/fail' basis. Shortlisting is a process where only the top ranked proposers (often the top 3) are allowed to submit proposals.

Once the request for qualifications process is complete, the agency moves to step two, a request for qualifications. The prequalified or shortlisted firms are invited to submit competitive, sealed proposals based on the bridging documents and other project information developed by the agency. Here the agency has two options: it can select a firm based on 'best value' or based on the lowest lump sum price submitted. If using 'best value', the local agency shall weigh price, technical design and construction expertise, and life cycle costs of 15 or more years as well as other relevant factors. The proposal responses must be ranked, with the award going to the firm offering the best value to the public agency.

Design-build under the Local Agency Act addresses all three of the procurement considerations noted above. First, the local agency has the option to select a design-build firm on a lump sum basis (i.e., price only) but can also select based on best value criteria. The Local Agency Act defines certain factors that must be considered but allows the agency to include other criteria and weigh the criteria accordingly.

Second, when using a 'best value' selection, the public owner can request development of a GMP for the work following award. As with the CMAR delivery method, a GMP should provide the owner with greater price certainty. When selecting a design-builder using a lump sum approach, the procurement process should provide the design-builder with sufficient time and the ability to develop costs as part of its response to the requests for proposal.

Third, the public agency can likely transfer the *Spearin* doctrine risk to the design builder. Pub. Cont. Code § 1104 provides in part that "[n]o local public entity, charter city, or charter county shall require a bidder to assume responsibility for the completeness and accuracy of architectural or engineering plans and specifications on public works projects, *except on* clearly designated design build projects." The legislature expressly contemplated this risk transfer.

One disadvantage of the Local Agency Act is the two-step selection process. Although the Local Agency Act does not expressly require the development of bridging documents to a particular level of completion, licensed professionals are typically engaged to do so, a process

7. Pub. Cont. Code § 22164(a)(1).

that requires time and money. The design firms preparing the bridging designs are generally disqualified from participating on the design-build teams that construct the work, as discussed below.

Design build firms proposing on projects under the Local Agency Act may also be required to undertake significant work to prepare their responses to the second step, the request for proposals. Particularly when proposal evaluations include review of aesthetic aspects and detailed cost submissions, proposing firms may be forced to incur substantial expense for what may be an unsuccessful result. Some owners have tried to ameliorate these issues with the use of stipends for firms that do not win the job.

The progressive design-build statute addresses these issues by providing a single step selection process that does not contemplate development of bridging documents.

Progressive Design-Build.

The progressive design-build statute became effective on January 1, 2024. There are two primary differences between design-build under the Local Agency Act and the progressive design-build statutes.

First, the progressive design-build statute provides for a single step procurement, rather than the two-step process required under the Local Agency Act. The local agency must prepare and issue a request for qualifications to select a design-build entity, including the "size, type, and desired design character of the project" plus the expected cost range, the method used to evaluate proposer qualifications, and any other information deemed necessary by the agency.[8]

Further detailed requirements for the request for qualifications package are listed in the statute. After receipt of responses to the request for qualifications, the local agency may evaluate the submissions based solely upon the information provided and has the option of interviewing "some or all" of the proposers to further evaluate qualifications.[9] There is no second step requiring a request for proposals for progressive design build.

Second, after selection of a design-build firm, the local agency may enter into a contract to begin design and preconstruction services to develop a GMP for the project. Upon agreement of the GMP, the local agency may amend the contract for the remaining design, preconstruction, and construction work to complete the project. The local agency has "sole and absolute" discretion whether to enter into the amendment, however, and the statute provides the local agency with an 'off ramp' if it decides not to amend. The local agency may (1) solicit completion proposals from the other firms that responded to the request for qualifications, or (2) upon written determination, formally solicit proposals from other design-build entities on a 'best value' basis.[10]

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8. Pub. Cont. Code § 22185.3(a)(1).

9. Pub. Cont. Code § 22185.3(c).

10. Pub. Cont. Code § 22185.5(c)(1).

This statutory ‘off ramp’ provides the local agency with options if the GMP is not acceptable and should create incentives for the design-build team because it must secure the second phase of work with an acceptable GMP.

As with design-build under the Local Agency Act, progressive design build addresses the three concerns with design-bid-build: pricing, design risk transfer, and more freedom in contractor selection. Progressive design build also shares features of the CMAR process in that it involves a single step procurement and two phases of work, with preconstruction, design, and GMP development followed by a second construction phase.

Common Features of the Design-Build Statutes.

There are several common features for design-build under the Local Agency Act and the progressive design statute that staff and counsel should be aware of:

Conflict of Interest Issues. Gov. Code section 1090 and case decisions interpreting the statute generally prevent design firms involved in master planning from working as part of a design-build team. This rule is grounded in the concept that the designer should not be allowed to set the scale of the project – which will have a direct relationship to the cost of the work – and then be allowed to participate in the profits. The more recent design-build statutes require public agencies to develop conflict of interest policies to address these issues. Generally, firms that are involved in master planning or development of bridging documents are excluded from participating in design-build teams.

Handling Subcontractors. Public contracting statutes and case decisions exist to protect subcontractors from bid shopping and bid peddling[11] and to enforce prevailing wage laws. The primary examples are the Subletting and Subcontracting Fair Practices Act in Public Contract Code section 4100 et seq. and within the Labor Code. The Local Agency Act and the progressive design-build statute require that proposers provide and enforceable commitment that subcontractors of every tier will use a skilled and trained workforce. This requirement may be satisfied through a project labor agreement. Proposers may also be allowed to include certain trade subcontractors as part of their proposing team. Subcontractors not included in the proposal may be procured through competitive bids, or in some instances, through ‘best value’ selections. Staff and counsel must carefully review the enabling statute to ensure compliance.

Standard Template for Statement of Qualifications. Most of the enabling statutes call for the public owner to prepare a standard template for statement of qualifications to evaluate design build proposers. The statutes may require an agency to collect information regarding the proposing entity, experience on similar projects, licenses to complete the work, ability to secure required bonds and insurance, the financial ability to perform and complete the work, and an acceptable safety record.

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11. Bid shopping is defined as “the use of the low bid already received by the general contractor to pressure other subcontractors into submitting even lower bids.” *Southern Cal. Acoustics Co. v. C.V. Holder, Inc.* (1969) 71 Cal. 2d 719, 726 n.7. Bid peddling “is an attempt by a subcontractor to undercut known bids already submitted to the general contractor in order to procure the job.” *Id*.

Public Private Partnerships.

Depending on the nature of the project, staff and counsel can consider a public-private partnership model. These delivery methods generally include design and construction, with private sector financing and often a long-term commitment for operations and maintenance. These statutes may allow a public owner to develop projects without some of the constraints of the Public Contract Code.

One option is the Infrastructure Financing Act in Gov. Code section 5956 et seq. which is intended to provide local agencies with "the authority and flexibility to utilize private investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities."[12]

This act is available to a broad range of local agencies, including cities, counties, school districts, community college district, and joint powers authorities among others. The act requires a competitive negotiation process for selection of the private entity to provide the design and construction services.

That process is generally defined in the statute, which also provides that "[o]ther than these criteria and applicable provisions related to providing security for the construction and completion of the facility, the governmental agency soliciting proposals is not subject to any other provisions of the Public Contract Code or this code that relates to public procurements."

Other options are available through lease-leaseback transactions under the Government Code, including Sections 25515 and 54240. These delivery structures typically use an agreement between the public owner and a private corporation for the lease of a parcel of land to the corporation for construction of a facility, which is then leased back to the public owner under a sublease. The sublease payments provide compensation for the costs of construction plus a profit for the corporation. Lease-leaseback structures can provide public owners with greater flexibility and control over the terms of the agreement.

Key Considerations for Alternative Delivery Methods.

Finally, when considering an alternative to design-bid-build, staff and counsel should consider the following issues at the outset:

What is the Legal Authority for the Procurement. As noted in the introduction, the default method may be design-bid-build. The Public Contract Code contains many enabling statutes for alternative project delivery methods, some which are entity and/or project specific, while other statutes provide broad authorization. Many statutes have limits on the number of projects or cost thresholds that make them unavailable for small projects. Understanding what methods are available is an important first step.

What is the Source of Money for the Project. Legal counsel should understand the documents related to any third-party funding to know how project funds can be deployed and if

12. Gov. Code § 5956.

there are restrictions placed on the use of funds for certain delivery methods. Some agencies place restrictions on procurements based on price evaluation. Other agencies may have different requirements for disbursement of soft costs for design versus hard costs for construction. Understanding how and when funds will be available is important. Funding delays or long reimbursement cycles may create challenges that cannot be overcome in certain delivery methods.

What is the time to Project Delivery? With a design-bid-build approach, the design is complete (or nearly complete) before it is competitively priced. Some alternatives to design-bid-build allow for design to occur in parallel to construction planning and pricing, and projects can be structured for phased approaches that may speed construction times. Many people view alternative delivery methods as providing faster start to completion times.

Industry Comfort Level. For certain types of projects, the construction industry is comfortable with contracts, understands how to price the work, how to get paid for changed work, and how to manage projects. In these instances, introducing alternatives to design-bid-build could be disruptive. For other projects, the design and construction industry may be more receptive to alternative approaches.

Conclusion

The procurement landscape for local agencies has changed significantly over the past several years, giving agencies a far broader range of potential models for developing large building and infrastructure projects. Understanding the differences among those models—some slight, some significant—is the necessary first step in deciding which model best fits the project at hand.

Municipal Tort and Civil Rights Litigation Update

Annual Conference 2026

Municipal Tort and Civil Rights Litigation Update
September 25, 2026

I. CALIFORNIA MUNICIPAL TORT LIABILITY

A. *Harland v. City of West Hollywood,* 120 Cal. App. 5th 1166 (2026)

- **Claimant cannot sue public entity within the 45-day claim presentation hold under Government Code §912.4; Complaint cannot be dismissed and refiled to circumvent noncompliance**

Plaintiff tripped and fell walking on a sidewalk in West Hollywood. Two days before the six-month claim presentation deadline, Plaintiff's attorney mailed a government claim to the City, then, two days after the mailing, filed suit against the City, before the City had even received the claim.

The City demurred based on failure to comply with the Claims Act presentation requirements found in Government Code sections 945.4 and 912.4(a) and (c). In response to the demurrer, Plaintiff filed a first amended complaint arguing that the 45-day response time had passed since the claim was first submitted. The trial court overruled the City's demurrer, noting "Harland served the summons and complaint before the time period expired for the City to respond…which defeats the whole purpose of the 45-day requirement."

Plaintiff then dismissed her lawsuit without prejudice and filed a second, new lawsuit. The City demurred again, arguing the second action was an effort to "circumvent the deficiencies" of her first lawsuit and was still in violation of the Claims Act.

The trial court sustained the City's demurrer without leave to amend, finding that the "initial failure to comply with the Act is a complete bar to the action" and "voluntarily dismissing that case and refiling it does not cure the failure to comply."

The court of appeal affirmed. Satisfying the Act's claim presentation requirements is a condition precedent to a tort action. Failing to comply with the claim presentation requirements subjects a complaint to a general demurrer for failure to state a claim. The claims presentation requirements ensure public entities get sufficient information to investigate claims *without the expense of litigation*. (*City of Stockton v. Superior Court*, 42 Cal. 4th 740, 746 (2007). Suing a public entity before presenting it with a claim defeats this function.

A claimant cannot sue a public entity unless and until they have complied with the claim filing requirement, and the entity has either outright denied the claim or failed to act upon the claim within 45 days. (Gov. Code §§ 945.4, 912.4(a).) (The period is extended to 50-days if served by mail under Government Code 915.2.)

Where a lawsuit is not preceded by rejection of a claim, a plaintiff's noncompliance with the Government Claims Act cannot be cured by amending the complaint to allege compliance. (*Lowry*, *supra*, at p. 221.) It is immaterial the City later denied the claim.

Significance: *Malear v. State* is a narrow exception that only applies if the prematurely filed complaint has not been served on the public agency, because the agency had not been forced to incur costs of litigation. Here, the City was deprived of the opportunity to investigate the claim before being forced into litigation. *Note the 45-day hold is increased to 50 days if the claim is served by mail.

B. *Sargenti v. City of Long Beach*, 120 Cal. App. 5th 702 (2026)

- **Unauthenticated and otherwise inadmissible Google images cannot be used to create issue of fact in an opposition to a motion for summary judgment**

Plaintiff was riding a rented e-scooter on a driveway section of sidewalk in Long Beach when he hit an asphalt patch and fell. Plaintiff sued the City, alleging the City had notice that the asphalt patch was dangerous and that it had negligently created or maintained the condition.

The City moved for summary judgment on several grounds, and the trial court granted the City's motion based on the user's web-based electric scooter rental application and release agreement (the ruling was made prior to the California Supreme Court issuing *Whitehead v. City of Oakland*). The trial court denied the motion finding a triable issue of fact on notice, holding that Plaintiff created a triable issue of material fact on constructive notice as his attorney submitted a screen shot of a Google Maps image purportedly depicting the subject driveway in March of 2015, five years before the accident.

In overruling the City's objections on foundation, authentication, and personal knowledge to the Google image, the trial court cited the California Supreme Court's *Sweetwater* decision and stated "trial counsel can cure the foundational defects at trial."

The court of appeal affirmed the MSJ, but on grounds of notice, finding the unauthenticated and otherwise inadmissible Google images could not create an issue of fact. Plaintiff's counsel "never stated who took the screenshot, when that person took it, what that person did to find the Google Street View image, or how that person ensured his or her screenshot accurately represented the sidewalk in 2015."

The court of appeal also emphasized Plaintiff did not even try to authenticate or provide foundation for the Google screenshot after the City (correctly) objected to its admission, despite the passage of four months between service of the motion and the opposition filing.

The Court found that *Sweetwater Union High School Dist. v. Gilbane Building Co*. (2019) 6 Cal.5th 931, does not authorize the court to consider inadmissible evidence submitted in opposition to a motion for summary judgment where the proponent claims it can cure the evidentiary defect at trial. Code of Civil Procedure section 437c "has always required the evidence relied on in supporting or opposing papers to be *admissible*" and *Sweetwater* does not change that rule.

The case also has a useful discussion of amending discovery responses to correct an error. An amendment to a prior, incorrect discovery response does not automatically create an issue of fact and does not preclude that party from obtaining summary judgment.

Significance: Unauthenticated historical Google "street view" images of a defective sidewalk condition cannot create an issue of fact to defeat a motion for summary judgment brought by a public entity based on absence of notice.

C. *Pagan v. City of San Rafael*, 119 Cal. App. 5th 853 (2026)

- **Public entity had no duty to warn of visible and obvious roadway conditions caused by weather; the opposition to the motion for summary judgment is limited by the allegations in the operative pleading**

A provisionally licensed teenage driver lost control of a car and injured the Plaintiff, a passenger. The driver was speeding, it had been raining, and the roadway was wet. Plaintiff's complaint listed the reasons why the roadway was defective, including that there were no warnings of a sharp left curve, no warnings of a combination of a sharp curve and slippery roadway, and no guardrails or other barriers to prevent cars from going down a steep embankment. There was no reference in the pleading to surface roadway conditions or degradation.

The City moved for summary judgment or in the alternative, summary adjudication that the alleged defects were open and obvious. Plaintiff opposed the City's MSJ based on a declaration from an expert witness that the rollover was caused by a damaged and crumbled pavement surface which had lost its structural integrity and caused a depression with cracking, potholes, and depressions.

The trial court granted summary adjudication as to issue number four, that the conditions were open and obvious as a matter of law. The trial court found the City "carried its initial burden to establish that there is no material dispute as to the fact that the roadway at issue was obviously wet with rain and obviously carried the enhanced danger typically associated with a wet road, as compared with a dry one." Finally, the trial court noted that Plaintiff spent much of the opposition advocating for a fourth 'dangerous condition' - that the roadway at the site of the accident featured 'severe degradation, alligator cracking, potholes, settlement and depressions in the wheel path' and that this is what caused the vehicle to hydroplane. However, Plaintiff's complaint had not plead this defect in the roadway surface as one of the 'dangerous conditions' on which her claim is predicated.

The Court of Appeal affirmed summary adjudication based on the following:

- The issues for a motion for summary judgment are framed by the operative pleading – not by the opposition. The materiality of a disputed fact is measured by pleadings which "set the boundaries of the issues to be resolved at summary judgment." Plaintiff cannot defeat summary judgment by relying on a new legal theory.

- Public entities do not need to anticipate negligence or recklessness – the determination is whether the condition is dangerous when due care is used. A public entity is only required to provide roads that are safe for reasonably foreseeable careful use. If it can be shown that the property is safe when used with due care and that a risk of harm is created only when foreseeable users fail to exercise due care, then such property is not "dangerous" within the meaning of Government Code section 830.

- Liability for dangerous condition cannot be premised on a claim that the property could have been made safer. (See *Belcher v. City and County of San Francisco* (1945) 69 Cal.App.2d 457, 463 ["liability is not to be fastened upon a municipality merely because it may appear that certain property, in nowise dangerous either in its construction or intended use, could possibly be made safer by other means"].)

- There can be no concealed trap where the dangers are reasonably apparent to those exercising due care. (*Sutton v. Golden Gate Bridge, Highway & Transportation Dist.* (1998) 68 Cal.App.4th 1149, 1165.)

- The Plaintiff must specify in the operative pleading what condition constituted a dangerous condition. *(Cerna*, *supra*, 161 Cal.App.4th at pp. 1347–1348; *Mixon v. Pacific Gas & Electric Co.* (2012) 207 Cal.App.4th 124, 131.)

- A declaration stating an expert's opinion may be admissible to defeat a summary judgment motion, but only if the requirements for admissibility are established in the same manner as if the declarant were testifying at trial. (*Towns v. Davidson* (2007) 147 Cal.App.4th 461, 472; *Perry v. Bakewell Hawthorne, LLC* (2017) 2 Cal.5th 536, 541.)

Significance: To allege a claim for dangerous condition, plaintiff must specify in what manner the condition constituted a dangerous condition. Here, that specification did not include a defective roadway surface. Public entities are not required to post warnings to motorists of visible roadway elements and weather conditions.

D. ***City of Riverside v. RLI Insurance*****,** 119 Cal. App. 5th 405 (2026)

- **City can properly name both consultant and the consultant's liability insurer as cross-defendants where it is a first-party additional insured under the consultant's insurance policy**

Plaintiffs sued the City of Riverside for dangerous condition of public property and wrongful death arising out of a fatal car accident. As to the first cause of action for dangerous condition of public property, Plaintiffs alleged that the roadway where the accident occurred had been the site of numerous prior collisions, was unreasonably dangerous, lacked sufficient signs or signals, and that the dangerous conditions were concealed. The City cross-complained for indemnification, breach of contract, and insurance bad faith, against numerous contractors and consultants, including a landscape contractor and its insurance carrier.

Regarding the insurance carrier, the City alleged that in its agreement with the landscape contractor, the City required insurance policies to protect the City against claims arising out of the landscape contractor's work, including negligence, and that insurance carrier agreed to name the City as an additional insured on all insurance policies in its agreement with the landscape contractor. Certificates of insurance were in fact issued by the insurance carrier. The City tendered defense and indemnity to the insurance carrier and included at least some of the relevant policies, as well as an endorsement from the insurance carrier noting that the City was added as an additional insured. The insurance carrier thereafter refused to defend and indemnify the City for the lawsuit against the City for dangerous condition on public property arising from the work of the landscape contractor under the contract.

The trial court sustained the insurance carrier's demurrer under *Royal Globe v. Superior Court*, where the California Supreme Court held that a cross-complainant "may not sue both the insurer and the insured in the same lawsuit." The insurance carrier also argued allowing the City to sue both the landscape contractor and the insurance carrier for the contractor violated the *Royal Globe* holding as well as the spirit of Evidence Code section 1155. The trial court sustained the insurance carrier's demurrer without leave to amend.

The court of appeal reversed. *Royal Globe's* general prohibition on suits against insurance carriers directly is inapplicable under these circumstances. By naming the City as an additional insured, the court of appeal found the insurance carrier undertook an independent written contractual obligation to the City for certain insurance protections.

Where the City is a first-party additional insured with privity of contract and standing to sue the insurance carrier, the prohibition against suing an insured and insurer in the same action does not apply. Instead, *Royal Surplus Lines Inc. Co. v. Ranger Ins.*, 100 Cal. App. 4th 193, is controlling, where the court determined the general rule in *Royal Globe* did not apply to a first-party additional insured in an action against the named insured and the named insured's insurer.

As to the insurance carrier's argument that the City could attempt to seek discovery of materials from the carrier's claim file, thereby creating a conflict between the insurance carrier and its insured, the claims against the insurance carrier are contract claims and to the extent the City seeks discovery regarding the insurance policy itself, there is no conflict of interest to address. Any remaining issues can be handled by the trial court's inherent authority to determine the order of issues at trial.

"To the extent [the insurance carrier] asserts the City is not an additional named insured, that matter should be resolved in conjunction with the claims against [the landscape contractor], who the City alleges had a contractual obligation to ensure the City *was* named as an additional insured, just as it was in *Royal Surplus*." The trial court erred in concluding the insurance carrier could not be properly joined in the City's cross-complaint.

***Significance*:** An additional insured in direct contractual privity with the insurer may assert direct breach of contract and bad faith claims in the same lawsuit against the insurer.

E. *Yan v. City of Diamond Bar*, 119 Cal. App. 5th 21 (2026)

- **Trial court may properly admit evidence of other tree failures of the same species in same vicinity solely to show notice of a dangerous condition**

Plaintiff was a pedestrian on a public sidewalk when a tree limb from a Bradford pear detached and fell, causing three limbs to fall on him, resulting in a spinal compression fracture. The tree was owned by the City of Diamond Bar, which contracted with a third-party arborist to conduct trimming of the City's trees every five years based on location. The arborist also handled specific requests by the City and maintained a database of those work orders. The City's oversight of trees was otherwise "reactionary" in that it responded to complaints by alerting the arborist to pick up fallen tree debris. The City's complaint intake system retained little information on the reason for debris pickup and it retained very few records of the complaints it received.

A City resident had reported several previous incidents of fallen limbs and branches of Bradford pear trees in the same neighborhood. Due to those complaints, the City's records documented that "the same tree that partially collapsed on plaintiff had experienced two prior branch failures—one five years prior to Plaintiff's accident and another ten months prior."

In the five years prior to Plaintiff's accident, other Bradford pear trees in the neighborhood experienced branch failures nine times, including limb the size of a truck bed falling from a tree canopy in 2016, a branch falling into an area where children load and unload from school buses in 2017, and branches falling from two different trees two weeks before Plaintiff's accident. On each of those occasions, the City directed the arborist to remove the fallen limbs but otherwise did not investigate the cause of the failure.

At trial, the court allowed evidence of the prior branch failures, instructing the jury that it could consider the prior branch failures as to the tree that harmed plaintiff as evidence bearing on (a) whether the City had actual or constructive notice of a dangerous condition and (b) whether that specific tree was in a dangerous condition, but (2) that the jury could consider the prior branch failures of other Bradford pear trees in the neighborhood solely as evidence bearing on whether the City had "actual or constructive notice of the dangerous condition." The jury returned a verdict for Plaintiff and awarded $250,000 for past noneconomic loss and $500,000 or future noneconomic loss.

Evidence of prior accidents on public property may be relevant to prove one of two elements of a dangerous condition claim—namely, (1) to prove that the public property was in a "dangerous condition," or (2) to prove that the public entity had actual or constructive notice of that condition.

When admitted to prove that the public property is in a dangerous condition, a prior accident is admissible only if it occurred under "the same or substantially similar conditions" as the accident at issue, although the prior and current accidents need not be "precisely" the same or "identical."

However, when a prior accident is admitted to prove that the public entity had actual or constructive notice of the dangerous condition, a prior accident is admissible as long as it is "similar enough" to "attract the public entity's attention to the dangerous situation at issue" and thereby "impart notice of some particular condition requiring correction." (*Hilts v. County of Solano* (1968) 265 Cal.App.2d 161, 168-169 (*Hilts*); *Howard v. Omni Hotels Management Corp.* (2012) 203 Cal.App.4th 403, 432.) This standard for similarity is admittedly "relaxed" compared to the standard when admitting prior accidents to prove a dangerous condition. Even prior accidents bearing a lesser degree of similarity to the accident at issue can still impart actual or constructive knowledge of a dangerous condition, including the need to investigate whether such a condition exists

The Court of Appeal found the trial court did not abuse its discretion in determining that the prior branch failures of Bradford pear trees in the same vicinity as the tree that injured plaintiff were admissible. The prior incidents were admitted *solely to establish notice*, so the prior incidents were admissible so long they were "similar enough" to the incident involving Plaintiff to "attract the City's attention to the dangerous situation at issue" and thereby "impart notice of some particular condition requiring correction."

Significance: Prior failures can be admitted solely to establish notice as long as they are "similar enough" to attract a City's attention and impart notice of a condition requiring correction.

F. Khedr v. Superior Court, 2026 WL 2018161 (June 24, 2026)

- **No substantial compliance where item "wholly omitted" from Government Claim**

Police officers sued their former department alleging they were subjected to retaliation and termination after reporting fiscal mismanagement and ethics violations against the police chief. Plaintiffs submitted timely government claim forms. As to the "Date of Loss" provision of the claim form, they stated "Numerous—Loss is ongoing."

The District sent Plaintiffs' counsel notices of insufficiency as to each claim, stating, in part, that their claim notices failed to comply with Government Code sections 910 and 910.2 and would not be considered on the merits because they did not specify a date of loss. The notices stated that pursuant to section 910.8, the District would take no action for a period of 15 days and that if Plaintiffs wished to correct the deficiencies, they should do so within that time period. Plaintiffs did not respond to the notices.

Government Code section 910 subdivision (c) requires the notice include "the date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted." The trial court sustained demurrers on the basis the claim forms failed to comply with section 910, finding the forms were fatally defective as a matter of law due to an entire absence of one factor. The trial court rejected the argument that because the misconduct was continuous and ongoing, it was not possible to state a single date of loss. Furthermore, the claim forms alleged multiple discreet events such that Plaintiffs could have made an effort to provide dates.

The purpose of the Claims Act is to provide the public entity sufficient information to enable it to adequately investigate claims and to settle them, if appropriate, without the expense of litigation. It is well-settled that claims statutes must be satisfied even in the face of the public entity's actual knowledge of the circumstances surrounding the claim." The claims statutes also "enable the public entity to engage in fiscal planning for potential liabilities and to avoid similar liabilities in the future." *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal.4th 983, 991. "The intent of the Government Claims Act is 'not to expand the rights of plaintiffs against government entities. Rather, the intent of the act is to confine potential governmental liability to rigidly delineated circumstances."

The doctrine of substantial compliance has been applied to determine whether a plaintiff's claim form, which is defective in some respects, nonetheless substantially complies with all statutory requirements for a valid claim form. *Santee v. Santa Clara County Office of Education* (1990) 220 Cal.App.3d 702, 713.

On appeal, Plaintiffs argued they had substantially complied with Government Code section 910 because they asserted the wrongful conduct was ongoing and the forms were dated. However, the Court of Appeal found the claims neither complied nor substantially complied with section 910 because they failed to specify any dates or date ranges on which the alleged wrongful conduct occurred. The substantial compliance doctrine has been found not to apply when a plaintiff has *wholly omitted* from his or her claim form a particular statutory requirement. *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 456.

Unlike *Knight v. City of Los Angeles*, where the California Supreme Court found a date range a sufficient specification to notify the defendant to investigate the claim, this situation involves a required item "wholly omitted" from the claim. "Petitioners' failure to specify any dates, or even a date range, for the multiple instances of alleged misconduct identified in their claim forms, instead merely stating the date as 'Numerous—Loss is ongoing,' does not constitute substantial compliance with section 910. Such indefinite and vague information does not provide sufficient information to allow the receiving entity to investigate petitioners' claims."

Significance: The claim must provide a specific date or a date range of the wrongful conduct. A claim devoid of any dates impedes the public entity's ability to investigate and does not substantially comply with the Claims Act.

G. *Eagle Colton 55, LP v. City of Colton,* 2026 WL 2097217 (July 21, 2026)

- **Serving demand letter on City Council member at offsite meeting does not constitute presentation under Claims Act**

Eagle Colton, a commercial developer, filed a complaint against the City of Colton asserting causes of action for intentional interference with prospective economic advantage, negligent interference with prospective economic relations, breach of the implied covenant of good faith and fair dealing, and defamation.

The complaint alleged Yucaipa city officials suddenly decided not to go forward with a development because City of Colton staff members had made comments to them regarding Eagle's alleged default in a separate contract. Further, it alleged that given what Yucaipa heard about Eagle's exchanges with City of staff, City staff did not expect Eagle to live up to its obligation to repay the loan—and was therefore writing the loan off. It further alleged that "these derogatory statements were all false," that they resulted in the "disruption and ultimate termination of the Yucaipa Project" and "harmed Eagle's reputation in other respects."

The City of Colton filed an anti-SLAPP motion which was denied by the trial court. On appeal, the City argued that Eagle was unlikely to prevail on its claims because they were barred by the Government Claims Act claim presentation requirement. Eagle argued that it sent a settlement demand letter to Colton's city attorney (who was in another county) and then handed the demand letter to a Colton city council member during an offsite meeting. The City council member did not consider the demand letter to be a Government Claim and never delivered the documents to the City clerk's office. The trial court found that delivery of the demand letter was compliance because "a member of the city council qualifies as the board who can be presented with a claim."

On appeal, the court first noted that claim presentation requires actual receipt by the "board of the local public entity." (Gov. Code, § 915, subd. (e); see also id., § 900.2, subd. (a) [defining "board" as "the governing body of the local public entity".) Here, the council member did not receive the letter while sitting as a body with the other members of the city council. He received it while alone and off-site during a private meeting. Additionally, the letter was not addressed to him as a city council member, nor to the city council as a whole, but instead to the city attorney at his office outside of Colton (in a different county).

Furthermore, the court found that a single member of the city council is not the "board" or "governing body" and delivering a letter to one member at a private meeting away from city hall, and where he did not recognize the letter as a claim and did not forward it to the city clerk or the city council, is not the equivalent of actual receipt by the "board" or "governing body." The council member simply was not statutorily authorized to accept and process Eagle's claim against the City of Colton. As the Supreme Court has explained, "[t]he Legislature retains authority to determine which representatives are appropriate. The Court of Appeal cannot override that determination simply because it concludes receipt by others should be considered sufficient." (*DiCampli-Mintz,* 55 Cal.4th at p. 994.)

The trial court incorrectly broadened the list of statutorily authorized recipients under the Claims Act thus denying the City of Colton an opportunity "to investigate and appropriately resolve claims and to plan for potential liabilities." (*DiCampli-Mintz, supra*, 55 Cal.4th at p. 994.) Reversed.

Significance: The Act's claim presentation provision requires actual receipt by the board of the local public entity. A single council member off-site and in a private meeting is not presentation to the board.

II. POLICE LIABILITY

A. *Gonzalez v. City of Phoenix,* 163 F. 4th 1289 (9th Cir. 2026)

- **No qualified immunity where suspect no longer resisting and in visible medical distress is hogtied and placed face-down in back of patrol vehicle**

Phoenix police officers received a call of a man acting erratically who appeared to be high on methamphetamine. Following a foot chase, the man was handcuffed and then placed in a RIPP hobble restraint (consisting of a nylon loop and strap connecting the ankles to handcuffs behind the back).

After application of the RIPP restraint, officers continued to use knees to press down on the man's back for an additional 55 seconds, holding him face-down on asphalt in 100 degree weather, where the man became unresponsive. Some six minutes later, the man was transported to a nearby parking lot in a police vehicle, still in the RIPP restraint and now face down in the rear seat. Medics arrived, found no pulse, and the man was pronounced dead a short time later.

Decedent's heirs brought suit under 42 U.S.C. §1983 for false arrest, excessive force, and a *Monell* claim. The district court granted Defendants' motion for summary judgment on false arrest and *Monell*. The court granted Defendants' motion on <u>initial application</u> of the RIPP restraint, but denied the motion on qualified immunity for use of force <u>after</u> the application of the RIPP restraint.

On appeal, the Ninth Circuit held that, under *Graham v. Connor*, a reasonable jury could determine the officers violated Decedent's constitutional rights by placing and transporting him in a hogtied and prone position after he surrendered and no longer posed a danger to the officers.

Under the second prong of qualified immunity, *Drummond v. City of Anaheim* clearly established that "in a situation in which an arrestee surrenders and is rendered helpless, any reasonable officer would know that a continued use of force or a refusal without cause to alleviate its harmful effects constitutes excessive force." *Drummond*, 343 F. 3d 1052 (9^{th} Cir. 2003).

Significance: The Ninth Circuit has continued to look closely at prone restraints without active resistance and hold that those cases present allegations sufficient to go to a jury.

B. *Fuhr v. City of Seattle,* 175 F. 4th 1081 (9th Cir. 2026)

- **Officers do not violate clearly established right when shooting suspect who discharged firearm in public then fled and ignored commands while advancing with baby in arms**

Seattle police received a call of an armed man who had discharged a firearm in a park and walked away holding an infant. Officers located the suspect, who fled. A short time later, the suspect approached a SWAT officer holding the infant in front of him. The SWAT officer fired, striking and killing the decedent. During deposition, the officer testified that he believed decedent was armed and using the child as either a hostage or human shield. At the time of the shooting, the decedent was unarmed but the gun was later located in the vicinity of the shooting.

Decedent's estate sued the officer and the Seattle Police Department and the district court granted the defendant's summary judgment motion based on qualified immunity.

A qualified immunity inquiry has two prongs, which can be addressed in either order. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009). Under the first prong, the court must consider whether the facts demonstrate violation of a constitutional right. *Id*. at 232. The second prong asks whether that right was "clearly established" at the time of the officer's conduct. *Id.*

In undertaking a qualified immunity analysis, the Supreme Court has emphasized that a clearly established right "should not be defined 'at a high level of generality'" and must be "'particularized' to the facts of the case." *White v. Pauly*, 580 U.S. 73, 79 (2017) Most recently the Supreme Court reiterated that, in defining a clearly established right, "principles stated generally, such as that 'an officer may not use unreasonable and excessive force' do not suffice." *Zorn v. Linton*, 146 S. Ct. 926, 930 (2026). In order "to find that a right is clearly established," we must "identify a case where an officer acting under similar circumstances was held to have violated the Constitution."

Accordingly, the court "looked for precedent that encompasses a noncompliant, fleeing, potentially armed suspect holding a child or potential hostage," and found none. Decedent's continued possession of the baby after firing a gun, fleeing from law enforcement, and ignoring commands to stop are factors that, when combined, distinguish this case from clearly established law that sets out a constitutional violation. "We are aware of no case clearly establishing a suspect's right to be free of excessive force in the face of these facts and when his actions are 'objectively threatening' to others."

Because no case clearly established a Fourth Amendment right was violated, the officer was entitled to qualified immunity.

Significance: The Ninth Circuit has continued to emphasize that qualified immunity depends on whether existing, specific case law clearly prohibits an officer's conduct in a rapidly evolving hostage situation.

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A Practical Guide to Litigation and Crisis Management Communication

Annual Conference 2026

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A Practical Guide to Litigation and Crisis Management Communications

September 25, 2026

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I. Introduction

Transparency. Honesty. Open Communication. Three key buzz words which constantly center around communications from anyone or anything in the public eye – whether it be a large corporation or a public entity (city, town, special district, etc.). But what do these buzz words really mean for a city in the context of litigation? Can the city, its employees or, councilmembers really be as "open" and "honest" as the public may demand? Likely, no.

However, with the right framework and protocols in place, cities should be able to develop a communication strategy to address the public's concerns while complying with state laws regarding privacy, confidentiality and protecting closed session privileges. This adaptable framework aids in identifying which potential or actual claims, litigation and/or an emergency crisis might call for communication by the city or its officials and, if so, who should speak on its behalf.

Additionally, the implementation of a communication plan/protocol aids in eliminating the risk and potential liabilities of an ill-timed or ill-considered statement. These risks include, but are not limited to additional litigation, the potential loss of coverage, and reputational harm.

II. When Should A City Consider Speaking?

A city's default response should not be to speak simply because an incident has occurred. Rather, decision-makers should first determine whether a public statement advances legitimate municipal interests. Before making a public statement, city officials should ask:

> Will this statement help the city provide necessary public information, protect public safety, or maintain essential public confidence?

If the answer is **<u>no</u>**, or if the primary effect would be to increase legal, financial, operational or reputational risk, the better course may be to hold comments. For example, John Doe files a routine complaint to enforce a Public Records Act Request after he feels he did not receive a proper response. Doe has now made several Facebook posts describing the legal proceeding and questioning the city's transparency. Should the city respond in a similar public forum? Likely no. In this example, the city gains little from commenting on the litigation, risks calling further unwarranted attention to it, and could create opportunities for misstatements or legal complications.

Additionally, if the incident is between private individuals or is unlikely to attract public attention, a public comment is likely not warranted. For example, Party A and Party B have children on the same little league team. At an evening game, Party A and Party B have an altercation. Both are private citizens but, the altercation happened at a city-owned baseball field. Should the city comment, as the altercation happened on its field? Again, likely no as there is no involvement of the city in the matter. Additionally, a statement from the city may likely drag the city into litigation for a deposition and/or subject it to a Public Records Request.

If the answer to the above question is **yes - a statement will provide necessary public information, protect public safety or maintain essential public confidence -**, the City must then determine whether the statement can create evidentiary, litigation, employment, privacy and insurance consequences. When crafting the statement, the city officials must remember that ANY STATEMENT MUST BE TRUE, 100% OF THE TIME – NOW AND IN THE FUTURE.

A. Legal Considerations Supporting Public Comment

In determining whether to issue a public statement, cities should consider not only communication objectives but also potential legal consequences. Statements by authorized officials may constitute admissions that can be used in litigation. Likewise, public commentary concerning pending claims, personnel matters, investigations, or potential settlements may undermine the city's legal position, interfere with investigative processes, implicate privacy rights, or prejudice ongoing proceedings. California law recognizes these concerns through protections for pending litigation, personnel records, investigative materials, and settlement communications. In general, if there is a statute protecting the confidentiality of a communication or a matter, or exempting records about a matter from production, it is wise to ask whether making a public statement would potentially violate that statute, or at the very least, risk disclosure of information that the legislature has determined should be kept confidential.

Accordingly, restraint is often the legally prudent course until material facts have been verified and counsel has had an opportunity to evaluate potential consequences as ANY STATEMENT MUST BE TRUE, 100% OF THE TIME – NOW AND IN THE FUTURE.

1. Public Statements Can Become Admissions.

Statements by authorized city officials may be admissible in subsequent litigation as admissions of a party-opponent. (Cal. Evid. Code §§1220; 1221 [excluding from hearsay statements offered against a party that the party adopted with knowledge of its contents]; 1222 [excluding from hearsay statements the party authorized another to make on his or her behalf]; 1223 [excluding from hearsay statements of declarants in the course of a conspiracy]; FRE §801(d)(2).) This creates risk when officials speculate about fault, responsibility, policy violations, or damages before investigations are complete.

Example: Following a vehicle collision involving a city employee, the city spokesperson states: "The city employee failed to follow its own safety protocol." Even if a later investigation disproves this statement, a plaintiff can introduce it as evidence of liability and open up the floodgates to depositions and, ostensibly, back-peddling of comments which can compromise trust, among other things.

2. Pending Litigation Requires Protection of the City's Legal Position.

California's Brown Act expressly recognizes that discussion of pending litigation can prejudice a city's position. (Cal. Govt. Code §54956.9.) It expressly authorizes closed sessions for consultations with legal counsel when open discussion could harm the city's interests in litigation. (*Ibid*.) This legislative recognition supports a broader principle - *to wit* – a city should not publicly disclose the information that could prejudice its defense, litigation strategy, settlement posture, or legal defense.

Hand-in-hand with this concept is the discussion of settlement and/or compensation. California Evidence Code §1152 protects settlement negotiations by making settlement offers and related communications generally inadmissible to prove liability. (Cal. Evid. Code §1152.) The statute reflects California's strong public policy favoring candid settlement discussions.

While the statute may protect settlement communications, public statements can inadvertently undermine settlement negotiations or create expectations that complicate the resolution of the claims. For example, before a Mandatory Settlement Conference, a city official publicly states: "The city intends to fully compensate Jane Doe for the harm caused." Although formal settlement communications may be protected, public pronouncements such as this can impair negotiation flexibility and place added financial pressure on the city and its risk pool to resolve a claim for a higher value than may be warranted. As is always the case, the defense tends to value claims differently than the plaintiff.

Example: Jane Doe's son died while in police custody and she has brought a federal civil rights lawsuit against the city. Causation is highly contested, and the city's outside defense counsel has filed a motion for summary judgment. While the motion for summary judgment is pending, mediation is scheduled between the parties. One week before the mediation and during the pendency of the motion for summary judgment, the mayor gives Jane Doe a key to the city for her advocacy work in relation to this incident. The damage this gesture can do to the city's bargaining position in mediation is difficult to overstate.

3. Ongoing Investigations Warrant Caution When Determining Whether a Statement is Necessary.

Cal. Government Code §7923.600-7923.625 recognizes the protections for investigatory records maintained by law enforcement and other agencies because premature disclosure can interfere with investigations and enforcement activities. A city official must be aware that any statement regarding an ongoing investigation may interfere with that process and/or create an unintentional bias in the outcome.

Example: The District Attorney is investigating a city employee for embezzlement. The local media has requested an official comment from the city about the employee and the investigation. The investigation is of public interest as it involves taxpayer money. Does the city make an official comment and, if so, what does the city say?

In these situations, the city must consider the legal consequences of every statement *and* the rights of the city employee (see further discussion *infra*). Since the investigation is ongoing, the Government Code sections cited above protect the records and the information contained therein. Accordingly, the likely best practice is to say only: "The City is aware of the matter and is cooperating with the appropriate authorities. Because the investigation is ongoing, the City will not comment further."

4. Personnel Matters Involve Significant Privacy Rights.

California law protects personnel files and information when disclosure would constitute an unwarranted invasion of privacy. Government Code §7927.700 reflects the strong public policy favoring confidentiality in personnel matters ["[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy."] Section 7927.700 and its predecessor §6254(c) was "developed to protect intimate details of personal and family life, not business judgments and relationships." (*Bakersfield City School District v. Superior Court* (2004) 118 Cal.App.4th 1041, 1045.)

Accordingly, a request for information regarding a personnel matter and/or personnel files involves a balancing test. "Under Section 6254, subdivision (c), the court balances the public interest in disclosure against the individual's interest in privacy." (*Los Angeles Unified School District v. Superior Court* (2014) 228 Cal.App.4th 222, 240.) When city employees take on this balancing test alone and disclose personnel matters and information, there is a substantial risk of additional litigation.

Example: Joe Doe works for the sheriff's department and testifies before a grand jury as whistleblower to alleged internal corruption. The sheriff's department contracts with the city for police services. During the grand jury investigation, the city manager gives multiple statements to the press regarding his knowledge of Joe Doe's employment and termination. A defamation lawsuit filed by Joe Doe follows.

III. Who Should Speak to the Media During a Crisis or Litigation?

During a crisis, investigation, or active litigation, public communications can significantly influence community trust, media narratives, employee morale, and legal risk. Municipal leaders often face pressure to respond quickly and visibly. However, not every city official is equally positioned to speak on behalf of the organization.

The most effective approach is to designate a single, well-prepared spokesperson and ensure close coordination among the City Manager's Office, Communications staff, department leadership, and legal counsel. While elected officials play a critical governance role, public statements from councilmembers during active disputes or litigation generally provide limited value and may inadvertently increase legal exposure, litigation costs, or personal liability.

Yet, as with all lawyer responses, each case is fact-dependent and "it depends".

A. Communications Director or Public Information Officer

A Communications Director or PIO is often highly effective because of professional media training and experience managing public messaging.

Their strengths typically include:

- Message development.
- Media relations.
- Crisis communications expertise.
- Ability to maintain consistent messaging across platforms.

In many organizations, the PIO either serves as the spokesperson or works closely with executive leadership to prepare designated speakers.

B. City Manager

The City Manager is often the most appropriate spokesperson because of their executive authority and broad understanding of city operations.

Advantages include:

- Organization-wide perspective.
- Established credibility with stakeholders.
- Ability to communicate strategic decisions.
- Strong understanding of operational impacts.

For citywide issues, governance matters, and organizational responses, the City Manager is frequently the preferred choice.

C. Police Chief or Fire Chief

Public safety leaders may be the most effective spokespersons when incidents involve:

- Emergency response.
- Public safety operations.
- Natural disasters.
- Criminal investigations.
- Community safety concerns.

Their operational expertise often provides greater credibility than general administrative leadership in these situations.

D. Other Heads of Department

When a matter primarily involves finance, procurement, infrastructure, technology, or other specialized operations, the relevant department director may be best positioned to address technical questions.

The spokesperson should possess:

- Deep subject-matter expertise.

- Strong communication skills.
- Ability to remain disciplined under scrutiny.

E. City Attorneys

Although legal counsel plays a critical role in reviewing and advising public communications, city attorneys generally should avoid serving as primary public spokespersons.

One significant concern is that attorneys who make substantive public statements may become percipient witnesses regarding disputed facts. If that occurs, they could be required to provide sworn testimony concerning those statements or their underlying knowledge.

Potential consequences include:

- Complications to litigation strategy.
- Attorney-witness conflicts.
- Challenges regarding continued representation.
- Increased legal costs and procedural complexity.

For this reason, legal counsel is often most effective behind the scenes, advising decision-makers and reviewing communications rather than serving as the public face of a matter.

Yet, with that being said, there is always a caveat where the city attorney may be in the best position to speak – particularly at the outset of proactive litigation. For example, the city has issued a Public Records Request to the Public Utilities Commission ("PUC") and has taken the position that the PUC has failed to comply. The city files suit to force compliance and holds a press conference regarding the same. At the outset of the litigation, the city attorney (without giving out legal strategy) is likely in the best position to explain to the public the allegations of the lawsuit.

F. City Councilmembers

Often the first who would like to speak, elected officials, are sometimes the last people who should take the podium. As experience shows and except under extraordinarily rare circumstances, public statements made by individual council members during active crises or litigation generally do not advance the city's interest and often send confusing messages.

Councilmembers fulfill an essential governance role through policy direction and oversight. During active legal disputes or sensitive investigations, however, public commentary can inadvertently become evidence, create new allegations, or complicate the city's defense. Accordingly, councils should strive for discipline and consensus regarding external communications and defer operational messaging to designated executive staff.

California elected officials are not immune from defamation claims. Recent litigation involving local elected officials demonstrates that statements made in public meetings, media interviews, campaign communications, court proceedings, and social media posts can result in lawsuits against a councilmember in their individual capacity. Even if a councilmember ultimately prevails, the costs associated with litigation, depositions, document production, and reputational harm can be substantial. For this reason, councilmembers should exercise particular caution when discussing pending disputes, personnel matters, investigations, contractors, developers, residents, or litigants. A coordinated communications strategy led by designated city representatives generally provides greater protection for both the municipality and individual elected officials.

One additional legal point that is particularly useful: California Government Code § 822.2 provides that public employees may be personally liable for injuries caused by actual fraud, corruption, or actual malice. (Cal. Govt. Code §822.2 ["A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption or actual malice."]) While it is often difficult for plaintiffs to prove, alleged defamatory statements are frequently accompanied by claims that the official acted with malice. That possibility is another reason why disciplined communications are recommended.

It can sometimes be difficult to convince councilmembers that they should refrain from speaking about an incident, because they often believe that doing so is in their best political interest, even though they may cite as justification the public's interest in transparent and responsive government. Councilmembers may also be interested in promising that something will be done about the incident. But if an appropriate city spokesperson such as a PIO or City Manager is speaking about the matter, then there is little additional public interest to be served by the councilmember speaking. Moreover, in reality, councilmembers cannot control the timing or outcome of investigations or other actions by staff or outside agencies in response to the incident, so they risk making a promise they cannot keep. There is also a risk that the councilmember will become a witness in the proceeding, be deposed (and hence subject to perjury risk), and potentially have to retain counsel at their personal expense, potentially embroiling the city in litigation over the matter. This in turn raises the specter of a potential Government Code §1090 violation if the city attempts to settle the duty to defend case. Moreover, a risk pool or insurance company may limit or even withdraw coverage for the underlying case if they determine that the city has violated the standard "cooperation" clause in insurance contracts or pool agreements due to the councilmember's statements that may have been interpreted as adverse to the city's interests. A candid conversation with a councilmember who is reluctant to refrain from speaking may be helpful.

A separate category of situations that can be difficult to navigate is when councilmembers are themselves the subject of civil, criminal, or administrative litigation. If the matter is unrelated to their position as an elected official, then there is little that the city should say, other than to refer questions to the councilmember. Councilmembers in these situations are likely to have retained their own attorneys and perhaps even media consultants who can advise them. In other matters, the councilmember's conduct may be related to their position, but again, discretion is often the best policy. The city may be unaware of what the outside investigating agency is doing, and hence any statements are likely to be speculation.

1. Councilmembers Do Retain First Amendment Rights

While city councilmembers retain substantial First Amendment rights as elected representatives, those rights are not unlimited. The United States Supreme Court has recognized that elected officials are entitled to broad protections when speaking on matters of public concern and public policy. (*Bond v. Floyd* (1966) 385 U.S. 116, 135 ["[t]he manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy."]) At the same time, First Amendment protections do not immunize councilmembers from defamation claims, disclosure of confidential information, or the practical consequences of statements that increase municipal liability. Public comments may become evidence in litigation, subject individual council members to depositions, and create personal exposure where plaintiffs allege malice, defamation, retaliation, or other misconduct. (*See Byrne v. Rule* (2025) 113 Cal.App.5th 708 [Residents alleged violations of the confidentiality provisions of the Brown Act for statements made by councilmember; anti-SLAPP motion denied and protracted litigation followed].)

Accordingly, the existence of First Amendment rights should not be confused with the absence of legal risk, or a suggestion that because a right exists, it should be exercised in all circumstances. Cities are generally best served when communications regarding active litigation, investigations, or crises are coordinated through designated spokespersons and reviewed by legal counsel where appropriate.

IV. Developing Communication Protocols for Cities Following Critical Incidents

The purpose of a communications protocol is to ensure that public communications during and after a significant incident are:

- Accurate and fact-based.
- Consistent across all agency representatives.
- Timely and responsive to public concerns.
- Coordinated with legal counsel and operational leadership.
- Compliant with applicable legal requirements.
- Supportive of transparency while protecting confidential and privileged information.

An effective communications framework reduces confusion, minimizes contradictory messaging, and helps preserve public trust during periods of heightened scrutiny.

A. Chain of Command

A clearly defined chain of command should govern all external communications.

The city should designate a final decision-maker responsible for approving public statements, press releases, media responses, and other significant communications. Depending on the nature of the incident, this individual may be the city manager, executive director, agency chief executive, or another designated official. Centralized decision-making ensures consistency and reduces the risk of conflicting statements from multiple sources.

An experienced media consultant or PIO will be aware of media deadlines and prepare draft statements for review based on these timelines. There should never be an instance in which the city releases a statement that has not been thoroughly vetted. On the other hand, just because a reporter is subject to a deadline does not mean that the city must drop everything and be compelled to respond accordingly. If the PIO or media consultant has an established professional relationship with members of the media, they should be able to navigate the timelines appropriately and provide public statements in due course.

B. Approval Process

All public communications should be vetted through an established approval process.

At a minimum, statements should be reviewed by:

- The designated communications lead.
- Relevant operational staff.
- Executive leadership.
- Legal counsel, when appropriate.

This process helps ensure factual accuracy, legal compliance, and message consistency before information is released.

C. Social Media Guidelines

Public agencies across the country have been sued over social media activity, including the blocking of critics, deletion of comments, and publication of statements alleged to violate constitutional or common-law rights. The recent Supreme Court decision in *Lindke v. Freed* and the Ninth Circuit opinion in *O'Connor-Ratcliff v. Garnier* underscore that social media activity may be treated as governmental action when officials use their accounts to communicate official business. Accordingly, agencies should adopt written social media protocols, limit official communications to authorized channels, and require legal review of potentially controversial online communications.

In *Lindke v. Freed*, James Freed created a private Facebook page in 2008. In 2014, Freed updated his Facebook page to reflect that he was appointed city manager of Point Huron, Michigan in addition to including some personal information. (*Lindke v. Freed* (2024) 601 U.S. 187, 191-192.) After appointment, Freed continued to post primarily personal posts with a smattering of posts related to his activities as city manager. After the COVID-19 pandemic began, Freed posted about that. (*Ibid*.)

Plaintiff, unhappy with the city's COVID-19 response, frequently visited Freed's page expressing his opinions. (*Lindke, supra*, 601 U.S. at 192.) Initially, Freed deleted Plaintiff's comments but eventually blocked him from commenting. *Ibid*. Plaintiff sued under 42 U.S.C. §1983 alleging that Freed had violated his First Amendment rights.

In determining whether Freed's social media activity constituted a "state action", the Supreme Court observed that an official must not only have state authority – he must also "purport to use it". (*Lindke, supra*, 601 U.S. at 201.) "State officials have a choice about the capacity in which they choose to speak on behalf of the State while speaking in his official capacity or when he uses his speech to fulfill his responsibilities pursuant to state law." (*Ibid*.) The Supreme Court ultimately held the speech is attributable to the state only if the official (1) posed actual authority to speak on the state's behalf and, (2) purported to exercise the authority when he/she spoke on social media. (*Lindke, supra*, 601 U.S. at 191.) However, the dicta in the opinion is most instructive.

When analyzing Freed's Facebook post, the Supreme Court noted the "hazy" nature of the posts since there was no disclaimer or explanation – i.e. it was not expressly designated as either "personal" or "official" raising the presumption it was "mixed use". (*Lindke, supra,* 601 U.S. at 203.) It then suggested language which would give the Facebook posts a "heavy presumption" of personal use – "this is the personal page of James R. Freed" or "the views expressed herein are strictly my own". (*Ibid.)*

Conversely, in *Garnier v. O'Connor-Ratcliff*, a member of the Poway Unified School District blocked parents from the trustee's Facebook and Twitter pages. Under the *Lindke* framework, the Ninth Circuit examined the nature of the accounts and concluded, unlike *Lindke*, that the accounts were official government accounts. (*Garnier v. O'Connor-Ratcliff* (9th Cir. 2025) 136 F.4th 1181, 1190-1191.)

With regards to the first prong of the *Lindke* framework, the Ninth Circuit found that the trustee, as president of the board of trustees of the district, had actual authority to speak on the school district's behalf because it was explicitly granted by California law and the district's bylaws. (*Garnier, supra*, 136 F.4th at 1189-1190.)

With regards to the second prong, the Ninth Circuit determined that the trustee was purporting to exercise official authority on the trustee's Facebook and Twitter pages. (*Garnier, supra*, 136 F.4th at 1190-1192.) The court found that both the presentation and operation of the trustee's social media accounts reflected their use as official governmental communication platforms. The accounts were regularly used to provide constituents with information regarding district activities, board actions, meeting schedules, and personnel matters, including announcements made prior to formal district releases. The pages publicly identified the trustee by official title, included the trustee's district email address, and contained no disclaimer indicating that the views expressed were personal rather than official. Viewed collectively, these factors demonstrated that the trustee was using the accounts to exercise authority and communicate on behalf of the district. (*Ibid*.)

Accordingly, when read together, it appears imperative that public officials (whether elected or appointed) be made aware of the ramifications of their social media posts – whether it be alleged Brown Act violations (*Byrne, supra,* 113 Cal.App.5th 708) or protracted litigation into whether the comments were made in an official capacity. (*Garnier, supra*, 136 F.4th at 1189-1190; *Lindke, supra*, 601 U.S. at 191.) These cases underscore the danger that social media posts about claims or litigation can themselves become the subject of litigation, while simultaneously creating legal and reputational risks in the underlying case to which they refer.

Councilmembers sometimes conflate whether they are speaking in their personal capacity and not their official capacity, with whether they are speaking in their official capacity but not for the city council as a whole. These two situations are different, and ideally, councilmembers should attach different disclaimers to their communications in each situation. In the first situation, councilmembers would be wise to understand that the public almost always views their public statements about virtually any topic related to the city as being made in their official capacity, and evaluate the legal and reputational risks of speaking accordingly. In the second situation, councilmembers should recall that only a majority of the city council can take an official position on a matter, and tailor their public comments about city business accordingly.

D. Coordination with Legal Counsel

Legal counsel should be integrated into communications planning from the outset.

Counsel can help assess:
- Confidentiality concerns.
- Privilege issues.
- Pending litigation risks.
- Public records implications.
- Regulatory reporting obligations.

Early legal reviews help balance transparency objectives with legal considerations.

E. Rules for Elected Officials and Staff

Agencies should establish routing rules for media inquiries and public communications. Generally:

- Media inquiries should be directed to a designated spokesperson.
- Elected officials should receive guidance regarding approved messaging.
- Staff members should refrain from providing unofficial statements and refer inquiries to authorized personnel.

Clear routing protocols help prevent inconsistent or inaccurate messaging.

V. What Can Go Wrong by Ill-Timed or Ill-Considered Communications

- **Risk of Inaccurate or Misleading Communications:** Public statements may contain errors or misrepresentations, leading to significant reputational harm and loss of public trust.

- **Privacy and Confidentiality Exposure:** Unauthorized disclosure of protected information, including medical, juvenile, personnel, or other confidential records, may create legal liability for both the organization and individuals involved.

- **Interference with Investigations:** Public comments can compromise the integrity of administrative or criminal investigations, jeopardizing impartiality and potentially result in legal consequences.
- **Violation of Privileged Communications:** Disclosure of closed-session discussions, attorney-client communications, or other privileged information may waive legal protections and expose the organization to substantial risk.
- **Public Records Compliance Risks:** Improper release of documents or failure to redact exempt information can result in regulatory violations and increased liability.
- **Creation of Adverse Evidence:** Public statements and records may become discoverable evidence in litigation, potentially harming the organization's legal position.
- **Personal and Organizational Legal Exposure:** Individuals who make public statements may become witnesses in subsequent proceedings, creating risks related to testimony, liability, and insurance coverage.

VI. Summary of Best Practices for Media Communications

- **Ensure Accuracy and Consistency:** Communications should be factually accurate, sustainable over time, and carefully vetted before being made public.
- **Protect Reputation Through Disciplined Messaging:** Public trust is difficult to build and easy to lose; consistent, professional communications are essential.
- **Use Designated Communication Channels:** Refer media inquiries to the authorized spokesperson and adhere to approved talking points to ensure unified messaging.
- **Communicate with Empathy and Neutrality:** Express condolences where appropriate, use neutral language, and focus on factual information rather than opinions or conclusions.
- **Respect Legal and Administrative Processes:** Acknowledge ongoing reviews or investigations, avoid premature conclusions, and emphasize commitment to due process.
- **Protect Privacy and Confidentiality:** Respect legal requirements governing personnel, employment, and other confidential matters.
- **Avoid Speculation and Admissions:** Do not speculate, assign fault, discuss liability, evidence, settlements, discipline, or make promises regarding future outcomes.
- **Maintain Professional Conduct:** Avoid public disputes among officials or staff, as such conflicts can undermine credibility and negatively impact legal and public relations outcomes.

- **Follow Established Legal Positions:** Consistent with policy, refrain from commenting on pending claims or litigation.

VII. Approved Talking Points

Please see the attachment with talking points from PLAN JPA.

LEAGUE OF CALIFORNIA CITIES

A Practical Guide to Litigation and Crisis Management Communication: Supplemental Information

Annual Conference 2026

1750 Creekside Oaks Drive, Suite 200, Sacramento, CA 95833
(800) 541-4591 Fax (916) 244-1199
https://www.planjpa.org/

Attachment 1

Amanda N. Griffith, Esq., Litigation Manager, PLAN JPA
Marc Zafferano, Esq., Senior Counsel, Boucher Law PC

Date: September 25, 2026
Re: Claims, Litigation, and the Media: Sample Talking Points

This memorandum is intended to provide guidance to City staff and members of their respective City Councils. However, no two situations are the same and each situation must be analyzed individually with the City Attorney and/or communications team, an outside attorney, and/or staff from your risk pool or insurance carrier. This memorandum is to provide guidance alone.

The main thing to remember is that <u>anything said should be 100% true now and also remain 100% true in the future.</u> In other words, don't speculate about the incident, as more facts might be revealed later that could render your statement untrue. Don't promise something that can't be guaranteed. By speculating about what did or didn't occur, or what might or might not occur in the future, you have created a situation that makes the City look as if it is not being transparent and is not accountable, which in turn tarnishes the City's reputation in the public eye. Those members of the public may be on a jury if the case goes to trial, and may tend to hold the City liable and/or increase the damage award as a result of their negative perception of the City.

Examples: Third-Party Claims/Litigation Against the City and/or Employees; Claims/Litigation by Employees Against the City

- "The City is legally prohibited from discussing any specific employee/officer or incident related to this claim/lawsuit because of state and federal privacy rights laws. The City respects the privacy and confidentiality rights of employees/officers as well as members of the public who may have information about the incident."

- "The City understands that the media/public would like to know more about this claim/lawsuit. To preserve the integrity of the legal process and fairness for all involved, the City has a policy of not discussing pending claims or litigation."

- "The City's priority has been, and will always be, to ensure that it is serving the community and providing as much information and transparency as allowed by the law."

- "The [City] takes this incident very seriously. This incident has been referred for an independent evaluation by outside professionals."

- "The City, working in partnership with the community, is committed to enhancing all individuals' quality of life by promoting a cohesive and supportive environment."

- "The City understands and appreciates the trust that the community places in both it and its employees. Despite the threatened legal proceedings, the City extends its support not only to those that have been directly involved, but also to the community in hopes of moving forward in a positive and collegial manner. [The City's priority has been, and will always be, to provide a safe environment free from harassment, intimidation or any other inappropriate conduct for everyone.]"

Examples: Press Statement and/or Response to Press Inquiries regarding an Outside Law Enforcement or Other Investigation

- "The City/Police Department is aware of the [Agency's] press conference held [today, yesterday, etc.] outlining its independent investigation into [incident description]. The City/Police Department is fully cooperating with the [Agency] as they continue their investigation. To respect and maintain the integrity of the investigation, the City/Police Department will not be providing additional comments at the time."

- "Because this incident involves conduct that may have occurred [off duty/outside the course and scope of employment and/or official duties], the City must respect the rights of the persons involved to due process and not make statements that could improperly influence the results of the legal proceedings."

Examples: Damage to City Infrastructure or Facilities

- "The City understands that damage to its facilities is disruptive, and staff is working tirelessly to repair/restore the facilities/services."

- "The City is working to determine how and why this incident occurred."

- "The City has declared a local emergency and has activated its Emergency Operations Center, which will be coordinating efforts among all City departments and any outside agencies for the benefit of its residents."

Additional General Guidance for Councilmembers regarding statements and contact with affected persons (such as families of a decedent or injured individual).

- Compassion for the family, [concern for officers – if applicable] and personal connections within the community are all understandable and human. However, at the same time, this incident is the subject of an active investigation and pending and/or anticipated litigation against the City. Thus, it is critical that all councilmembers refrain from making any public statements about the incident in any setting, other than as approved by the City Manager, City Attorney, and any outside counsel. This includes, but is not limited to, comments to the media, statements at public gatherings or protests and posts/reactions on social media. Even well-intentioned remarks expressing sympathy or personal views can be taken out of context and used against the City in a lawsuit.

- For the same reasons, councilmembers should not reach out directly to, or communicate with, those directly involved (including victims and family members) regarding the incident. While the desire to express condolences is understandable, any communication can create a misunderstanding and be construed an admission of fault. Not only does this prejudice the City in any legal proceedings, but it also places an additional emotional burden on the family should the legal proceeding playout in a way favorable to the City.

- If approached by members of the public or media, councilmembers should limit their response to a neutral statement such as: "I cannot comment on a matter involving pending investigations or litigation against the City." This statement is not intended to limit empathy or compassion; rather it is designed to protect the City and ensure no unintended statements are made that could complicate the legal process or undermine the integrity of the processes.

- For example, unintended statements regarding the vague "need for justice" have resulted in councilmembers' depositions being taken. Additionally, such statements have led to courts holding that the City waived its defense of discretionary immunity. Statements made by elected officials that can be construed as an admission of liability have resulted in a denial of coverage by primary and excess JPAs due to breaches of the terms of the Memorandums of Coverage, which require the City to cooperate with the pool or insurance carrier in the defense of the City.

Nothing but the Truth? Candor and Honesty for City Attorneys

Annual Conference 2026

Nothing but the Truth? Honesty and Candor for Municipal Lawyers

By: David King, Attorney, Hensley Law Group

INTRODUCTION

The duty of honesty is among the most fundamental obligations of the legal profession. Every municipal lawyer serves within a justice system that depends upon truthful representations. Courts, opposing counsel, government officials, and the public must be able to trust that lawyers will not knowingly make false statements or advocate unsupported claims. Although lawyers are expected to represent their clients zealously, that duty never supersedes the obligation to act with honesty and integrity. Without lawyers' adherence to such principles, the legal system cannot function effectively or maintain public confidence.

The disciplinary proceedings involving former lawyer and law professor John Eastman provide a cautionary reminder of the consequences for abandoning these ethical duties. In the weeks following the 2020 presidential election, Eastman emerged as one of the principal legal architects of an effort to prevent or delay the certification of former President Joe Biden's electoral victory.[1] Eastman, along with lawyer Kenneth Chesebro, developed "something that looked like a legal framework under which Vice President [Mike] Pence could refuse to certify the election based on electors submitted in several swing states."[2] Eastman set forth his theories in memoranda arguing that the Vice President possessed authority to decline to count electoral votes from states in which the Trump campaign alleged election irregularities. Eastman "advised Pence that he had several options, including delaying the vote count, allowing state legislatures to certify alternate slates of Trump electors, unilaterally deciding not to count Biden electors where there was a question about the validity of their designation, and referring the decision to the House of Representatives."[3] Eastman's advice became part of a broader effort to persuade Pence to depart from the traditional understanding of the Vice President's largely ministerial role in counting electoral votes.

The problem was that Eastman's legal advice was based on both dubious legal arguments and false factual claims. According to the findings subsequently made in Eastman's California disciplinary proceeding, Eastman continued to advocate his position despite substantial authority contradicting it and despite acknowledging aspects of his theory that were inconsistent with existing law and historical practice. Indeed, Eastman himself had stated before the November 2020 election that the Vice President did not have the authority to unilaterally decide which votes to count.[4]

In addition, in advocating efforts to challenge the election results, Eastman relied upon and repeated allegations of election fraud and voting irregularities in several states. The California State Bar Court later found that a number of those factual assertions were false or misleading and

[1] *In the Matter of John Charles Eastman, State Bar No. 193726*, 6 Cal. State Ct. Rptr. 186 (June 13, 2025).
[2] W. Bradley Wendel, *The Good Lawyers of January 6*, 46 CARDOZO L. REV. 2143, 2151 (July 2025).
[3] Id. at 2158.
[4] *Matter of Eastman*, 6 Cal. State Bar Ct. Rptr. 186, 200.

that Eastman made statements concerning the election without an adequate factual basis. For instance, "Eastman ignored various statements regarding the election, such as former U.S. Attorney General William Barr's December 1, 2020 conclusion that insufficient evidence existed of widespread outcome-determinative fraud."[5] The disciplinary proceeding therefore presented an issue broader than whether Eastman's constitutional interpretation was novel, aggressive, or ultimately incorrect: it required the court to determine whether a lawyer may invoke uncertain or disputed legal theories while simultaneously relying upon factual claims the lawyer knows, or should know, are unsupported.

In January 2023, the State Bar of California filed eleven disciplinary charges against Eastman arising from his post-election conduct. Following 34 days of trial, State Bar Court Judge Yvette Roland found Eastman culpable on ten of the eleven counts and recommended that he be disbarred.[6] The court concluded that Eastman's conduct went beyond zealous advocacy and constituted serious professional misconduct, including two counts of seeking to mislead a court, and seven counts of moral turpitude through misrepresentations or other acts of dishonesty or corruption. The Review Department of the State Bar Court subsequently upheld the recommendation,[7] and in April 2026, the California Supreme Court ordered Eastman disbarred.

The Eastman case thus presents a sobering reminder of the professional responsibilities of lawyers engaged in high-stakes advocacy. Lawyers must have substantial freedom to advance novel legal theories, challenge existing precedent, and represent unpopular clients and causes without fear that an unsuccessful argument will later become the basis for professional discipline. That freedom, however, is constrained by duties of honesty, candor, and loyalty to the legal system.

The following article serves as a brief reminder for municipal lawyers on their ethical duties of honesty and candor. Municipal lawyers routinely face situations in which pressure from clients or supervising attorneys may tempt them to spin the facts, omit material information, or overstate the law. The State Bar Act (sometimes, the "Act")[8] and the California Rules of Professional Conduct (CRPC) exist to ensure that lawyers remain faithful to their professional obligations even when doing so is embarrassing or inconvenient. This article summarizes key rules within the Act and the CRPC and provides context for the rule within the municipal law space. The article concludes with key takeaways for municipal lawyers.

A FEW REMINDERS AT THE OUTSET

Before we review the ethical rules, a few reminders:

It bears mentioning that for municipal lawyers, "the client is the organization itself, acting through its duly authorized directors, officers," etc.[9] That means the lawyer's duties of loyalty,

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[5] Id. at 195.
[6] Id. at 186.
[7] Id. at 187.
[8] Bus. & Prof. Code § 6000 et seq.
[9] CRPC Rule 1.13, a lawyer retained or employed by an organization represents the organization acting through its duly authorized constituents

confidentiality, independent judgment, and candid legal advice run to the city as an entity. Municipal lawyers should be mindful that elected officials and city staff members may change over time, but the client remains the governmental entity and its long-term legal interests. Being mindful of the identity of the client helps municipal lawyers preserve their professional independence and fulfill their role as trusted advisors to the public institution they serve.

Of course, entities cannot speak or give direction on their own, so the ethics rule recognizes that the organization needs constituents to function, and those constituents have an important role to play. Anyone authorized to act on behalf of an organization is a constituent of the organization[10]; depending on how a city is organized, the most common constituents will be the mayor and city council. Because the municipal lawyer's ethical duties – such as candor and confidentiality – run to the entity, if a constituent is acting in a way that is adverse to the city, the municipal lawyer must explain the identity of the lawyer's client to the constituent.[11] That way, the constituent is on notice that any potential violations of the law that could be imputed to the organization may have to be reported to city leadership.[12] Ultimately, the municipal lawyer must "proceed as is reasonably necessary in the best lawful interest of the organization."[13]

Also, when reviewing the following ethical rules, keep in mind that "honesty" and "candor" mean different things. Candor, or being truthful,[14] means actively making known the full truth of a matter. On the other hand, being honest means not telling lies. Thus, according to one legal scholar, while lawyers must always be honest (*i.e.*, not tell lies), they do not always need to be truthful (*i.e.*, they need not always make known the full truth). For example, in the context of litigation, "[c]ounsel may not deliberately mislead the court, but has no obligation to tell the defendant's whole story."[15] For municipal lawyers, this distinction between being honest and truthful is best shown during "report outs" of closed session, as described in the next section.

NAVIGATING ETHICAL RULES AND THE BROWN ACT IN "REPORT OUTS" OF CLOSED SESSION

The obligation to "report out" of closed session is an example of how a California municipal lawyer's duty of honesty operates alongside duties of confidentiality and loyalty to the municipal client. Under the Brown Act, a legislative body must publicly report certain actions taken in closed session, such as specified approvals of litigation decisions, settlements, and employment actions.[16] The municipal lawyer often advises the city council about whether a reportable action has occurred and sometimes makes the report on the council's behalf. Although much of what occurs during a lawful closed session remains confidential[17] and may also constitute attorney-client privileged information, the confidentiality of the closed session does not authorize the municipal lawyer to make a false or materially misleading public statement about what occurred.

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[10] CRPC Rule 1.13, comment [1].
[11] CRPC Rule 1.13(f).
[12] CRPC Rule 1.13(b).
[13] Id.
[14] The terms "truthfulness" and "candor" are used interchangeably in ABA Model Rules.
[15] Dennis A. Rendleman, *"Truthiness" and Professional Responsibility*, Ethics in View (Dec. 2019), citing Matthew Frederick and Vibeke Norgaard Martin, 101 Things I Learned in Law School (2013).
[16] Gov. Code § 54957.1(a).
[17] Gov. Code § 54963.

The lawyer's ethical duties reinforce this distinction between remaining silent about confidential information and affirmatively misleading the public. As discussed in more detail below, there are several ethical rules that prohibit lawyers from knowingly making false statements.[18] Thus, while a municipal lawyer often must decline to disclose confidential details, the lawyer should not use confidentiality as a basis for providing an inaccurate account of what occurred.

The distinction becomes particularly important when no "reportable" action was taken. A municipal lawyer may appropriately state that "there is no reportable action" when that statement accurately reflects the requirements of the Brown Act. That statement does not ordinarily mean that nothing happened in closed session; rather, it means that the council did not take an action that the Brown Act requires to be publicly reported. But a municipal lawyer must take care to not embellish that statement – for example, by saying that the council "did not discuss" a particular matter when it did. Even if the lawyer is attempting to protect privileged or confidential information, an affirmative falsehood is fundamentally different from declining to disclose information that the law permits or requires the city to keep confidential.

Accordingly, a municipal lawyer must navigate three complementary obligations: transparency where the Brown Act requires disclosure, confidentiality where the law protects closed-session communications, and ethical duties prohibiting dishonesty. The safest approach is often to "stick to the script": disclose exactly what the statute requires,[19] avoid revealing protected closed-session communications, and avoid "off script" characterizations that could create a false impression about what occurred. Municipal lawyers should keep in mind that while client confidentiality rules may limit what a lawyer can say, such rules do not give the lawyer permission to say something that is untrue.

THE MOST ROBUST ETHICAL RULES REQUIRING CANDOR APPLY IN COURT

Our legal system depends on the principle that cases will be decided on the truth and not lies. Witnesses who appear in court are often required to tell "the truth, the whole truth, and nothing but the truth." A case would be wrongly decided if it was decided on anything but the "whole truth."

For this reason, the most robust ethical rules relating to candor apply to a lawyer's conduct in court. Per CRPC Rule 3.3, a lawyer shall not knowingly make false statements of fact or law, knowingly disclose or misquote legal authorities, or offer evidence the lawyer knows to be false.[20] The rule also imposes an affirmative duty to correct false statements of material fact or law made by the lawyer, and correct false evidence or representations, when necessary, even when doing so may be adverse to the client's interests.[21] The rule calls these "remedial measures," and they include explaining to the client the lawyer's obligations and seeking permission from the tribunal to withdraw. Note, however, although the lawyer may need to speak with a judge to fulfill her obligation under the rule, the lawyer still has a duty to maintain

[18] *See, e.g.,* CRPC Rules 4.1, 8.4(c); Bus. & Prof. Code § 6106.
[19] Gov. Code § 54957.1.
[20] (a)(1), (2) and (3).
[21] CRPC 3.3(a)(1), (3).

client confidences.[22] Accordingly, this rule reinforces the integrity of the judicial process and makes clear that, in the event of a conflict, the lawyer's role as officer of the court supersedes the lawyer's duty of loyalty to their client.

Other rules within Chapter 3 of the CRPC expand on a lawyer's duty to be honest within litigation. For example, Rule 3.4 obligates a lawyer to act fairly in litigation and prohibits conduct that improperly interferes with the truth-seeking process or an opposing party's access to evidence. Among other things, the rule prohibits a lawyer from unlawfully obstructing another party's access to evidence or unlawfully altering, destroying, or concealing evidence; and falsifying evidence or assisting a witness in giving false testimony.[23] In short, Rule 3.4 reinforces that zealous advocacy does not permit lawyers to manipulate evidence, abuse discovery, improperly influence witnesses, or otherwise undermine the fairness of the adversarial process.

The cases lawyers file, and the claims and contentions that lawyers make in court, must be "honest" as well. CRPC Rule 3.1 prohibits a lawyer from bringing or continuing an action, conducting a defense, asserting a position in litigation, or taking an appeal without probable cause and for the purpose of harassing or maliciously injuring any person. Except for criminal cases,[24] lawyers must have a good faith basis in law and fact for their arguments. The rule does not prevent a lawyer from pursuing a claim or defense that may ultimately be unsuccessful, nor does it prohibit a good-faith argument for an extension, modification, or reversal of existing law. At its core, Rule 3.1 seeks to prevent lawyers from misusing the judicial process through frivolous or abusive litigation while preserving their ability to advocate vigorously for clients and to advance legitimate arguments for changes in the law.

Similarly, the California Code of Civil Procedure (CCP) imposes obligations on lawyers and parties who present pleadings, motions, and other papers to a court.[25] By presenting a filing, an lawyer or unrepresented party effectively certifies that, after a reasonable inquiry, the filing is not being presented for an improper purpose, such as harassment, unnecessary delay, or needless increase in litigation costs; that its legal claims and arguments are warranted by existing law or by a nonfrivolous argument to change or establish the law; and that its factual allegations and denials have, or are likely to have after reasonable investigation or discovery, appropriate evidentiary support.[26] The statute, CCP § 128.7, permits a court to impose sanctions for violations, either on motion or on its own initiative, with sanctions generally limited to what is necessary to deter similar conduct. Section 128.7 thus serves as an important safeguard against frivolous filings and misuse of the judicial process.

The State Bar Act complements the CRPC by emphasizing that effective advocacy must always be grounded in honesty. Specifically, Section 6068(d) of the Act requires lawyers employ only those means that are consistent with truth and never to seek to mislead a judge or judicial officer

[22] CRPC 3.3(a)(3).
[23] CRPC 3.4(a).
[24] In criminal cases, Rule 3.1 recognizes that defense counsel may require the prosecution to establish every element of the offense even when there may not otherwise be a basis for contesting the charge.
[25] CCP § 128.7.
[26] Id.

through false statements of fact or law.[27] The statute also requires lawyers to maintain only those actions, proceedings, or defenses that appear legal and just.[28]

Last but certainly not least, municipal lawyers should also keep in mind that courts have articulated a higher ethical obligation for public lawyers. At least one court has observed that "[a] government lawyer in a civil action or administrative proceeding has the responsibility to seek justice and to develop a full and fair record." The court applied the higher ethical obligation to a private lawyer retained by a city and applied the rule to either prosecuting a criminal case or representing the government in a civil action.[29] For municipal lawyers, whose advice often influences significant public decisions, the obligation underscores that legal advocacy must never come at the expense of truthfulness or the fair administration of justice.

ETHICAL RULES REQUIRING CANDOR ALSO APPLY OUTSIDE OF COURT

Because the justice system depends on the truth to function effectively, the strongest ethical rules requiring candor apply to litigation. But many municipal lawyers spend much of their time outside of court. The following summarizes the rules that apply outside of litigation.

CRPC Rule 4.1 governs a lawyer's communications with individuals *other than the court*, including opposing counsel, witnesses, members of the public, and third parties. The rule prohibits lawyers from knowingly making false statements of material fact or law or failing to disclose material facts when disclosure is necessary to avoid assisting a client's criminal or fraudulent conduct.[30]

There are some important exceptions to the general rule. First, confidential client information must not be disclosed.[31] In addition, a lawyer "generally has no affirmative duty to inform an opposing party of relevant facts."[32]

For a municipal lawyer in the middle of a negotiation, the lawyer has latitude with certain statements that do not constitute "statements of material fact." For example, "[e]stimates of price or value on the subject of a transaction and a party's intentions as to an acceptance of a claim" do not normally qualify as statements of material fact, and therefore the lawyer is not obligated to disclose such facts.[33]

Interestingly, Rule 4.1 does not apply to statements by a lawyer to their client.[34] In fact, there is no rule that *expressly* requires a lawyer be honest to their client. There are, however, several

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[27] Bus. & Prof. Code § 6068(d).
[28] Id. at (c).
[29] *People ex. rel Clancy v. Superior Court*, 39 Cal.3d 740, 745-46 (1985); *see also* Manuela Alburquerque, "City Attorney Ethical Issues," League of California Cities paper, 1993 City Attorney's Spring meeting, available at: https://www.cacities.org/UploadedFiles/LeagueInternet/62/62f7452a-cfb3-4612-b205-593e899200f0.pdf
[30] CRPC Rule 4.1(a), (b).
[31] Id. at (b).
[32] CRPC 4.1, comment [1].
[33] Comment [2] to Rule 4.1.
[34] Rule 4.1 only refers to "third persons" and is part of Chapter 4 "Transactions with Persons *Other that Clients*." (emphasis added).

rules that require honesty generally, so although it is interesting that there is no express rule, the general rules would apply to the lawyer's communications with a client. Speaking of lawyer-client communications, a lawyer is required to explain matters to the extent reasonably necessary to the client so that the client can make informed decisions.[35] That same CRPC rule also states that a lawyer "may delay transmission of information to a client if the lawyer reasonably believes that the client would be likely to react in a way that may cause imminent harm to the client or others."[36] This rule is a rare instance allowing the lawyer to *delay* speaking the truth for a reason other than to maintain client confidentiality.

Lastly, the ethical rules requiring candor even apply to communications with prospective clients. Rule 7.1 prohibits a lawyer from making false or misleading communications about the lawyer or the lawyer's services. "A communication is false or misleading if it contains a material misrepresentation of fact or law, or if it omits a fact necessary to make the communication, considered as a whole, not materially misleading."[37] The rule recognizes that lawyers may conveniently leave out necessary facts; for this reason, the comments to the rule make clear that even "truthful statements" can be misleading if such statements leave out other details.[38] For example, a lawyer's communication stating "no fee without recovery" would be misleading unless the communication also expressly discloses whether or not the client will be liable for *costs*.[39]

ETHICAL RULES REQUIRING CANDOR APPLY TO A LAWYER'S PERSONAL LIFE (!!!)

Fun fact: at least one ethical rule, and one State Bar Act section, not only prohibit dishonest acts by a lawyer during the practice of law but also extend to a lawyer's personal life as well.

CRPC Rule 8.4(c) provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation. Unlike rules that govern specific aspects of legal representation, Rule 8.4(c) reaches a broad range of conduct, whether occurring in litigation, transactional practice, interactions with clients, *or even outside the practice of law* when the conduct reflects on the lawyer's fitness to practice.[40]

Likewise, Section 6106 of the Act authorizes professional discipline when a lawyer commits acts involving moral turpitude,[41] dishonesty, or corruption, whether committed during the practice of law "or otherwise."[42] The statute reflects the principle that honesty is a fundamental qualification for membership in the legal profession. California courts and the State Bar have long recognized that conduct involving deceit, intentional misrepresentation, or fraudulent behavior may warrant

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[35] CRPC Rule 1.4(b).
[36] Id at (c).
[37] CRPC Rule 7.1(a).
[38] CRPC Rule 7.1, comment [3].
[39] Comment [3].
[40] Comment [1] to Rule 8.4 ("A violation of this rule can occur when a lawyer is acting in propria persona or when a lawyer is not practicing law or acting in a professional capacity.")
[41] "Moral turpitude, broadly defined, is conduct which is contrary to justice, honesty and good morals." *Calzada v. Sinclair* (1970) 6 Cal. App. 3d 903, 915.
[42] Bus. & Prof. Code § 6106.

significant discipline, including suspension or disbarment, because such conduct demonstrates a lack of the integrity required of lawyers.

For municipal lawyers, whose responsibilities include safeguarding the public interest and advising governmental decision-makers, compliance with Section 6106 reinforces the profession's expectation that lawyers maintain the highest standards of honesty both inside and outside the practice of law.

OTHER LAWYERS HAVE A DUTY TO REPORT DISHONEST BEHAVIOR THAT RAISES A SUBSTANTIAL QUESTION AS TO THE LAWYER'S HONESTY

CRPC Rule 8.3, which took effect in California on August 1, 2023, requires a lawyer to:

> "inform the State Bar, or a tribunal …when the lawyer knows of credible evidence that another lawyer has committed a criminal act or has engaged in conduct involving dishonesty, fraud, deceit, or reckless or intentional misrepresentation … that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

Importantly, the reporting obligation is subject to significant exceptions. A lawyer may not disclose information protected by the duty of confidentiality or information obtained while participating in an approved lawyer assistance program, and no report is required if doing so would violate those obligations.[43]

For municipal lawyers, Rule 8.3 reinforces the principle that maintaining the integrity of a "self-regulating" profession is a shared responsibility. Although the rule has suffered from disparaging names and comparisons to "Soviet Big Brother tactics,"[44] the rule is intended to require lawyers to report only "those offenses that a self-regulating profession must vigorously endeavor to prevent,"[45] thereby protecting clients, the courts, public agencies, and the legal profession as a whole.

MODELING CANDOR AND HONESTY IN PUBLIC PRACTICE

Based on the rules above, the following is a list of practical takeaways for municipal lawyers:

1. Protect your credibility as diligently as you do your bar license.
Municipal lawyers regularly advise city councils, planning commissions, city managers and department heads. Every interaction either strengthens or weakens your reputation. Once credibility is lost, it is difficult to fully restore.

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[43] CRPC Rule 8.3; *see also* comments [2], [4].
[44] *See, e.g.,* Panda L. Kroll, "*New CRPC Rule 8.3 that mandates we report each other raises the specter of Soviet Big Brother tactics*," DAILY JOURNAL (July 27, 2023), available at https://www.dailyjournal.com/articles/373971-new-crpc-rule-8-3-that-mandates-we-report-each-other-raises-the-specter-of-soviet-big-brother-tactics.
[45] CPRC Rule 8.3, comment [4].

Professional reputation is built one conversation at a time. Your reputation is shaped by countless small decisions over the course of your career:

- accurately citing authority;
- correcting inadvertent mistakes;
- acknowledging unfavorable precedent;
- avoiding exaggeration;
- admitting when you do not know the answer.

These habits distinguish trusted advisors from merely competent lawyers.

2. Candor strengthens public trust.
Municipal lawyers serve public institutions, and candor strengthens such institutions. Indeed, local governments depend upon public confidence to function effectively. When legal advice is honest and objective, staff reports accurately present the law, and government lawyers are known for their integrity, residents are more likely to trust governmental decision-making even when they disagree with the outcome.

3. Ethical compliance is the floor, not the ceiling.
The State Bar Act and CRPC establish minimum standards of conduct. Exceptional municipal lawyers strive for more than simply avoiding discipline. They cultivate a reputation for fairness, objectivity, and integrity. Being technically compliant is not always the same as exercising sound professional judgment.

4. Candor sometimes requires delivering unwelcome or unpopular advice.
Municipal clients occasionally face significant political pressure. Your role is not to provide the advice elected officials want to hear—it is to provide the advice the law and your independent professional judgment requires. A municipal lawyer must have the courage to say, "The law does not permit that course of action."

5. Correct mistakes promptly.
Lawyers are human beings and make mistakes. Candor is demonstrated by acknowledging and correcting material errors when they are discovered – even when doing so is embarrassing or inconvenient.

6. Never sacrifice long-term credibility for a short-term victory.
A misleading statement may provide a temporary win in litigation or a political advantage. A reputation for honesty will benefit you throughout your career. Judges, opposing counsel, and public officials remember lawyers whose representations consistently prove accurate.

7. Tread ethically during Brown Act report outs. When reporting action taken in closed session, accurately describe what occurred and avoid wording that is technically defensible but materially misleading. Disclose exactly what the Brown Act requires, avoid revealing protected closed-session communications, and avoid "off script" characterizations that could create a false impression about what occurred.

8. Omissions can be as problematic as affirmative misrepresentations.
Municipal lawyers should continually ask:

- *Does this statement create a misleading impression?*
- *Am I accurately characterizing the law?*
- *Have I fairly described the facts?*
- *Would I be comfortable defending this representation if it appeared in a published opinion?*

9. Candor extends beyond the courtroom.
The duty of honesty applies in every aspect of municipal practice, including preparing staff reports on controversial topics, responding to Public Records Act requests, contentious settlement negotiations, communications with opposing counsel, and public presentations and community meetings. A lawyer's integrity should never vary depending upon the audience. And, as stated above, the ethical rules prohibiting dishonesty, fraud, deceit, or misrepresentation extend to a lawyer's personal life.

CONCLUSION

Municipal lawyers occupy a position of exceptional public trust. Our effectiveness depends not simply on our knowledge of the law, but on the confidence that judges, public officials, opposing counsel, and our communities place in our integrity. The State Bar Act and CRPC establish the minimum standards for honesty and candor. The best municipal lawyers strive to exceed those standards every day, understanding that credibility is not merely an ethical obligation—it is integral to effective public service.