

General Municipal Litigation Update

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Agenda

- Attorney-Client Privilege
- Elections
- Administrative Exhaustion
- Municipal Finance

Attorney-Client Privilege



Johnson v. Department of Transportation, 109 Cal.App.5th 917 (3rd Dist. 3/17/2025)

- Attorney sent email to low level employee who shared it with employee suing for discrimination. Court issued protective order. Attorney violated protective order/shared with experts. Attorney, Experts disqualified. Ct App affirmed.
- Communication with low level employee privileged if purpose is to obtain information from employee to allow attorney to prepare case.
- Employee disclosure of privileged communication does not waive privilege unless employee has authority to waive privilege on behalf of the agency.

Elections

San Diego Public Library Foundation v. Fuentes, **111 111 Cal. App.5th 711 (4th Dist. 5/29/2025)**

- Registrar rejected signatures due to misspelled address, individual letter of address not legible, letters in address deleted or transposed, abbreviated street name, or non-USPS abbreviation for address. Trial Court agreed.
- Court of Appeal: Registrar should not have rejected signatures due to misspellings and other issues with the addresses.
- Elections Code § 105: address written on petition must be “the same” as address on voter registration record. Ct. App: Not strictly applied. Dissent: Strictly applied.
- Purpose of requirement is to determine if person is a registered voter. Can be done without letter for letter matches.



Admin. Exhaustion

Tesoro Refining & Marketing Co. LLC v. City of Carson,
2025 WL 653916 (2nd District, 2/28/2025) (unpublished)
rev. granted, S289952 (5/8/2025) 🗺️



- Oil Company contested business tax by filing GCA claim but didn't follow Muni code claims procedures. Demurrer on claims procedure sustained.
- Ct App. affirmed: Oil Company failed to prove GCA preempts the field of gov claims. Rejected cases not applying preemption principles.
- Question for Review: Must a claimant for a local government tax refund comply with a local administrative review procedure prior to pursuing its remedies under the GCA, or does GCA preempt such a requirement under field preemption?

Municipal Finance

***Patz v. City of San Diego*, 113 Cal.App.5th 225 (4th Dist., Mod. 8/27/2025), pet. for rev. pending, S292698** 🏗️



- San Diego used tiered rates for SFR customers and uniform rate for other classes. Trial Court held rates violate Proposition 218 proportionality requirement. \$79 million refund.
- Water Rates: Ct. App. deferential to trial court on substantial evidence review. Rejected reasonableness standard of proof. Rates violate Proposition 218 because not tied to source of water, not sufficient data to use base-extra capacity method, and different rate structures discriminates against SFR customers.
- Remedy: Upheld Gov. Code § 53758.5 as barring case refund. Folded into next rates.
- Noisy Dissent: Justice Menetrez says reasonableness is standard. City must meet to prove tiered rates proportional. San Diego's ratesetting evidence did that. No discrimination bar in Proposition 218 requiring same rate structure for all classes.

Municipal Finance

***Rogers v. Redlands*, 112 Cal.App.5th 667 District, mod. 6/30/2025); rev. denied 🏡**

- Redlands' trash rates recover amounts to pay City the cost for street damage caused by the trash trucks.
- Trial court found Redlands' inclusion of repair costs in trash rates is charge for privilege of using City's streets violating Vehicle Code § 9400.8. Ct App affirmed relying on *County San. Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544. Prevents full cost recovery by trash utility.
- Trial Court denied refund remedy. Ct App affirmed. Ratepayers failed to pay the challenged trash fees under protest as required by H&S § 5472.



Municipal Finance

Gluck v. City & County of San Francisco,
Cal.App.5th 769 (1st Dist., 5/30/2025) 🏡



- Before 2023, SF sewer rates recovered stormwater costs and rates set using wastewater factors-strength/flow and not stormwater factors-permeable surface area. 2023- SF updated rates to correct with 7-year phase in.
- Class action against SF challenging sewer charges related to Stormwater services.
- Ct App: Prop 218 Applies to combined Sewer/Stormwater charges. But, sewer rates not proportional before 2023 or during phase-in because used wastewater factors and not stormwater factors.

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