GENERAL MUNICIPAL LITIGATION UPDATE

2026 CITY ATTORNEYS SPRING CONFERENCE
LEAGUE OF CALIFORNIA CITIES

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*A note of thanks to the RWG attorneys who contributed to the writing of this paper: Fabiola Ceja, Chelsea Downes, Abigail Ellerman, Michelle Embury, Ryan Hallett, Natalie Kalbakian, Paul Lee, Peter Martin and Chelsea Straus.

RWG LAW

General Municipal Litigation Update

I. *Airport Business Center v. City of Santa Rosa*, 116 Cal.App.5th 501 (2025)

Holding: A city determination, supported by substantial evidence and written findings, that a city-owned asset constitutes surplus land under the Surplus Land Act does not require the city to find that the land is of no use to the public.

Facts/Background: In December 2022, the City of San Rosa adopted a resolution declaring that a property the City was using as a parking garage constituted surplus land under the Surplus Land Act ("the Act"). The Act allows the disposition of local government land under a uniform approach when it is no longer necessary for the agency's use. The Act also distinguishes surplus land from exempt surplus land; the latter is not subject to the same dispositional requirements. Before a local agency may dispose of surplus government land, the Act requires the agency to issue a Notice of Availability to affordable housing developers, among others, and negotiate in good faith with interested entities.

As part of its process, the City commissioned a study of city-owned downtown parking facilities to determine the regularity of public use, with the aim of identifying public land suitable for future housing development. The study revealed the parking garage at issue, Garage 5, was the smallest of the facilities surveyed and was in worse condition than other parking garages studied, requiring approximately $3 million in necessary repairs. Following the study, the City Council held a public meeting to review the City's potential surplus downtown assets, which resulted in a City Council directive to make Garage 5 available for development as affordable housing pursuant to the Surplus Land Act. Additionally, staff mentioned that because Garage 5 did not qualify as exempt surplus land under the statutory definition, the City must adhere to the Act's process for disposing of surplus land.

The City Council, at a regular noticed meeting, discussed the matter and considered adopting a resolution declaring Garage 5 as nonexempt surplus land, subject to retaining some public parking on the property. City staff provided analyses supporting the resolution, noting that the City had no additional public use for the property beyond ongoing public parking and that the property's beneficial use could be optimized if the City disposed of it, conditioned on retaining 75 public parking spaces.

After local business owners, including the Appellant, objected, the Council did not take formal action. Instead, it held additional study sessions and commissioned a study focused on the utilization of the City's downtown parking facilities before adopting the resolution. The commissioned study revealed that only 30 percent of downtown public parking spaces were being used. Even after accounting for parking demand levels before the COVID-19 pandemic, roughly 2,585 parking spaces in the downtown area would remain unused. If the City were to sell three parking facilities, including Garage 5, the remaining parking facilities could accommodate the parking demand.

After the resolution was adopted, the appellant challenged the City's decision, arguing the City failed to make the requisite findings under the Act to declare Garage 5 surplus land by failing to consider: (1) that prior to the COVID-19 pandemic, Garage 5 had the highest parking usage rate; (2) the City relied on short-term data as evidence; and (3) the Resolution's requirement to provide 75 public parking spaces on the property "on a go-forward basis" demonstrates that Garage 5 is not surplus property. However, the court found that the extensive administrative record showed the City's actions were not arbitrary or capricious; the decision to declare Garage 5 surplus property was not without evidentiary support or procedurally unfair; and appellant did not show the City had failed to comply with the Act.

Analysis: The appellate court affirmed the lower court's decision and concluded the City of Santa Rosa did not abuse its authority under the Surplus Land Act by designating a city-owned public parking garage as surplus land, despite the fact that the property still functioned as a parking facility and the City required the retention of some parking spaces for future developments.

The court rejected the argument that land currently used for a public purpose cannot be designated as surplus land under the Act. The statutory requirement under the Act that requires a local agency to take formal action declaring that the land is "not necessary for the agency's use" focuses on whether the property is essential to an agency's use, not on whether the property serves any public benefit.

In this case, an ongoing general need for public parking in the City's downtown area did not preclude the City from determining that a specific parking facility was unnecessary for the agency's use, particularly when other parking facilities are able to accommodate current and future demand. The court emphasized that the Legislature does not specify when property is considered "necessary for the agency's use," thereby allowing agencies to make their own assessments of current needs based on individualized factors.

The court also noted the City's 12,000-page administrative record contained substantial evidence supporting the City's determination that the property constituted surplus land. For example, the City conducted comprehensive studies on parking usage, and the data collected indicated that City parking facilities were underused, the Garage 5 structure required significant repairs, and other parking facilities could satisfy public demand if Garage 5 were sold.

Additionally, the court rejected the argument that the City failed to meet the written findings requirement of the Act by only providing a single substantive finding—that Garage 5 is "not necessary for the City's use"— in the City's resolution. In its analysis, the court indicated that the statute does not elaborate on what must be set forth in such written findings. However, it is reasonably expected that these findings will provide a factual predicate for a declaration that the property is, in this case, surplus land. The finding in the City's resolution, taking into account the recitals and other contents in support of the finding, meets this requirement.

Impact: The decision in this case affirms local governments' autonomy to evaluate and assess the unique factors relevant to their jurisdictions for purposes of determining whether a property is "necessary for the agency's use" when considering disposing of land under the Surplus Land Act, and that an ongoing public use does not preclude finding a property to be surplus land.

II. *Alameda County Taxpayers' Association Inc. v. City of Oakland* 118 Cal.App.5th 1264 (2026)

Holding: Provisions of Oakland Measure Y that identified the Conservation Society of California as the current "Zoo Operator" and assigned the "Zoo Operator" functions, duties, and financial obligations tied to a new parcel tax violated Article II, Section 12 of the California Constitution, which bars any initiative from naming or identifying a private corporation to perform any function or hold any power or duty. The three references to the Conservation Society were severable from the remainder of Measure Y, which remained valid and enforceable. Measure Y required only a simple majority to pass because it was a bona fide citizens' initiative, not a local government measure subject to the two-thirds supermajority requirements of Propositions 13 and 218 and Government Code section 50077.

Facts and Procedure: The Oakland Zoo is owned by the City of Oakland and managed by the Conservation Society of California, a nonprofit corporation, under a management agreement expiring in 2039. In November 2022, Oakland voters considered Measure Y, a citizens' initiative proposing a $68/year parcel tax on single-family properties (with varying amounts for other property types) for 20 years to raise roughly $12 million annually for zoo operations. The measure defined "Zoo Operator" and expressly stated that the Conservation Society "is currently the Zoo Operator pursuant to a management agreement with the City of Oakland." A companion definition of "Oakland Zoo" similarly identified the zoo as "currently managed by the Conservation Society of California, a California nonprofit corporation." A third provision addressed potential future changes in management and again named the Conservation Society by reference.

Under the measure, parcel tax proceeds were to be deposited into a special fund and distributed to the Zoo Operator for authorized purposes. As a condition of receiving those funds, the Zoo Operator was required to retain an independent auditor to prepare an annual report, maintain the zoo's accreditation, and indemnify the City against claims arising from administration of the tax. Measure Y received 63.1 percent of the vote, and the Oakland City Council certified its passage.

In February 2023, the Alameda County Taxpayers' Association, Inc. and Marcus Crawley filed a reverse validation action seeking to invalidate Measure Y on two grounds: (1) the measure violated Article II, Section 12 of the California Constitution by naming the Conservation Society and conferring functions, powers, and duties upon it; and (2) the measure required a two-thirds supermajority vote under Propositions 13 and 218 and Government Code section 50077. The trial court rejected both claims, finding: (1) no

Article II, Section 12 violation occurred, or, alternatively, any violation was severable; and (2) only a simple majority vote was required. The Association appealed.

Analysis: *Cal. Const. art. II, § 12***:** The court held that Measure Y's provisions naming the Conservation Society as Zoo Operator violated Article II, Section 12 of the California Constitution. The court relied principally on *Pala Band of Mission Indians v. Board of Supervisors*, 54 Cal.App.4th 565 (1997), a case in which an initiative defined "Applicant" as a specific corporation and then imposed duties on that Applicant. The *Pala Band* court found such provisions unconstitutional. The court here applied the same reasoning to reject the City's argument that Measure Y merely acknowledged the Conservation Society's preexisting contractual role. Measure Y went further: it independently assigned the named entity new statutory obligations tied to the parcel tax. The court distinguished *County of Alameda v. Alameda County Taxpayers' Assn.*, 99 Cal.App.5th 226 (2024), where a hospital was named in an initiative's findings, but not assigned any function, power, or duty. That passive role did not run afoul of Article II, Section 12. Here, by contrast, the Zoo Operator was expressly identified as the Conservation Society and bore concrete duties as a condition of receiving tax proceeds.

Severability: Because Measure Y contained an express severability clause, the court applied a presumption in favor of severance and evaluated the three-part test of grammatical, functional, and volitional separability. All three were satisfied. The references to the Conservation Society appeared in discrete sentences or clauses that remained coherent after removal. Deleting those references would not affect the collection of the parcel tax, the administration of the Zoo Fund, or the obligations of whoever holds the Zoo Operator role. Notably, the ballot arguments for and against Measure Y made no mention of the Conservation Society specifically (opponents criticized the involvement of a "private corporation" generically), which confirmed that the Conservation Society's identity was not material to a reasonable voter's decision. After severance, Measure Y continued to operate as intended, with functions and duties assigned to the generic role of "Zoo Operator" rather than to any named entity.

Supermajority Requirement: Under *California Cannabis Coalition v. City of Upland*, 3 Cal.5th 924 (2017) and a line of appellate authority, the two-thirds vote requirements of Propositions 13 and 218 constrain only local legislative bodies, not the electorate's initiative power. The court rejected the Association's argument that alleged government involvement in the Measure Y campaign converted it into a government measure. In doing so, the court agreed with *County of Alameda* (2024) and *Alliance San Diego v. California Taxpayers Action Network (Alliance II)*, 114 Cal.App.5th 1121 (2025) that *Rider v. County of San Diego*, 1 Cal.4th 1 (1991) (which addressed whether an agency qualified as a "special district" under Proposition 13) has no application in the initiative context. Under *Alliance II*, once the requisite procedural steps for a citizens' initiative are satisfied (i.e., notice, signature-gathering, ballot placement, and majority approval), the measure qualifies as a bona fide citizens' initiative and nothing more is required. The court also rejected the argument that Measure Y's cross-reference to Government Code section 50077.5 (a reverse validation procedure statute) imported section 50077's two-thirds enactment threshold. Measure Y expressly stated it would take effect upon approval by a simple majority, and that plain statement controlled.

Impact: This decision has three main implications for cities.

First, on drafting: initiatives that channel funds through a private operator or contractor should refer only to the functional role (e.g., “Zoo Operator”) and not identify any occupant of that role by name. Assigning duties to a generic role is permissible, but naming a specific corporation that fills it is not, at least when those duties are also tied to the initiative. Where a named contractor is already in place, the drafting solution is straightforward: describe the role, not the entity.

Second, on severability: a well-drafted severability clause is always an essential safeguard. The court’s willingness to sever the three offending references preserved the entirety of Measure Y’s taxing and spending mechanism, avoiding the need to re-run the measure.

Third, on the supermajority question: this decision, together with *Alliance II* and *County of Alameda*, firmly settles that government support for a citizens’ initiative, even significant involvement, does not trigger a two-thirds vote requirement under Propositions 13 and 218 and Government Code section 50077.

III. *Alliance San Diego v. California Taxpayers Action Network et al.*, 114 Cal.App.5th 1121 (2025)

Holding: The Court of Appeal upheld Measure C, finding that the city’s validation action was proper, that the city’s bond authorizations were valid under the Special Fund Doctrine and not subject to constitutional debt limitations, and that the measure qualified as a bona fide citizens’ initiative subject to a simple majority vote.

Facts/Background: Consistent with recent case law, including *County of Alameda v. Alameda County Taxpayers’ Assn., Inc.* (2024) 99 Cal.App.5th 226, courts have held that voter initiatives imposing special purpose taxes are subject to a simple majority vote because the two-thirds supermajority requirements of Propositions 13 and 218 apply only to special purpose taxes imposed by local governments.

In the City of San Diego, proponents qualified a citizens’ initiative, Measure C, for the March 2020 ballot. Measure C increased the City’s transient occupancy tax and dedicated the additional revenue to special purposes, including homelessness programs, street repairs, and convention center improvements. The measure also authorized the City to issue bonds to be repaid from the additional tax revenues. Measure C passed with approximately 65 percent of the vote. The City Council subsequently adopted resolutions declaring the measure approved and authorizing the issuance and sale of bonds. A taxpayer organization then filed suit challenging the validity of the measure and the related bond authorizations, including on the ground that the measure required a two-thirds vote to pass.

Analysis: In concluding that Measure C was valid, the Court of Appeal made the following holdings:

First, the Court held that the trial court had subject matter jurisdiction over the City's validation action. The Court rejected the argument that validation actions apply only to already issued bonds because the City's resolutions authorizing and approving the issuance and sale of bonds were sufficiently connected to government indebtedness, as they were necessary steps in the bond finance process, and the project financing depended on them. The Court further explained that bonds are deemed to exist upon authorization under the state's Code of Civil Procedure § 864. Accordingly, the preliminary bond authorizations fell within the scope of the validation statutes, and jurisdiction was proper.

Second, the Court found the case was ripe under a two-pronged test: whether the dispute was sufficiently concrete to warrant declaratory relief, and whether delaying judicial review would cause hardship to the parties. The first prong was satisfied because the City Council's resolutions certifying the election results and authorizing and approving the bonds presented a concrete set of facts suitable for judicial review. The second prong was also satisfied because, absent judicial intervention, the City might be unable to proceed with issuing the bonds or do so at reasonable interest rates, as the risk of future litigation could deter lenders and create hardship. Therefore, the case was ripe for adjudication.

Third, the Court found that, although cities are generally subject to the constitutional debt limitation set forth in Article XVI, section 18 of the California Constitution, including the requirement of a two-thirds vote to incur debt, that requirement did not apply here under the Special Fund Doctrine, which provides that obligations payable solely from a specific fund do not constitute debt within the meaning of that provision. Although challengers argued that language permitting the City to "supplement" bond payments with other legally available funds created an implied obligation to use general funds, the Court rejected that interpretation, concluding that, read as a whole, the bond documents limited repayment to Measure C's special tax revenues and did not obligate the City to any other source of funding. Accordingly, the bonds were limited obligations payable from a special fund rather than general obligation bonds, and thus subject only to a majority vote.

Fourth, the Court found that Measure C was a bona fide citizens' initiative and therefore subject only to a simple majority vote. Although challengers argued that involvement by individuals connected to a city-created and affiliated nonprofit corporation, as well as the corporation's formal support of the measure rendered the initiative effectively government-sponsored, the Court rejected that argument, concluding that such involvement did not amount to substantial control, which would have subjected the measure to a two-thirds vote requirement. The Court emphasized that the proponents acted in their individual capacities, that the corporation's role was limited to expressing support, and that the initiative was proposed, circulated, and qualified for the ballot through voter petition.

Fifth, the Court found that the trial court did not abuse its discretion by excluding newspaper articles offered as hearsay evidence purportedly showing that government-affiliated individuals sponsored Measure C. Although it was argued that the articles fell within recognized hearsay exceptions, the Court rejected those arguments, finding that the individuals were not parties or authorized representatives and that the asserted exceptions were either inapplicable or forfeited. The Court emphasized that no substantive legal analysis or authority was provided to establish error, which would have been required to demonstrate an abuse of discretion. Absent such a showing, there was no basis for reversal, and the judgment was affirmed.

Impact: *Alliance San Diego* reinforces that cities may rely on the voter initiative process to approve special purpose taxes by a simple majority, even where similar taxes imposed by the city would require a two-thirds vote. It also reinforces that a citizens' initiative will not be treated as a government-sponsored measure absent evidence that the city exercised substantial control over the initiative process, which the challenger failed to establish on the record in this case. This case also confirms that cities may structure bond financings backed by special tax revenues to avoid constitutional debt limitations under the Special Fund Doctrine. Finally, the decision confirms that cities may use validation actions at the bond authorization stage, reducing legal uncertainty and mitigating litigation risk that could affect financing.

IV. *Baird v. Bonta*, 163 F.4th 723 (9th Cir. 2026)

Holding: California's geographic ban on openly carrying loaded or unloaded firearms in densely populated counties is facially unconstitutional under the Second Amendment and Fourteenth Amendment, applying the standard established in *New York State Rifle & Pistol Ass'n v. Bruen* (2022) 597 U.S. 1.

Facts/Background: In *Bruen*, the U.S. Supreme Court established a two-prong standard to evaluate firearm-related regulations. First, the Constitution presumptively protects any regulated conduct that is covered by the plain text of the Second Amendment. Next, the government must demonstrate that a regulation is "consistent with the Nation's historical tradition of firearm regulation." A challenged firearm law may pass constitutional muster if supported by a proper historical analogue.

The appellant Mark Baird is a resident of Siskiyou County and lawful firearm owner. For several years, he sought to obtain a license that would allow him to open-carry throughout the State of California. The practice of openly carrying a loaded or unloaded firearm was outright prohibited in counties with populations greater than 200,000 under California Penal Code sections 25850 and 26350. However, the practice was permitted for firearm owners issued an open-carry license in counties with populations less than 200,000. Baird challenged both the "urban open-carry ban" in populous counties and the "rural licensing scheme."

The district court denied Baird's motion to enjoin the enforcement of these provisions that criminalized open-carry for both his facial and as-applied claims on procedural and substantive grounds. After the Ninth Circuit reversed and remanded the decision with instructions for the lower court to assess all injunctive factors, including the likelihood of success on the merits of the constitutional claim, the district court dismissed the as-applied challenge of the rural licensing scheme since he had not sued a licensing official or agency, and ruled in favor of the state with respect to the facial challenge of the open-carry ban.

Analysis: The Ninth Circuit was again unpersuaded by the state's historical argument, holding that the prohibition on the issuance of open-carry licenses in populous jurisdictions constituted an effective ban, and was thus invalid under the *Bruen* test.

The panel affirmed the district court's dismissal of the challenge to the rural open-carry licensing scheme, and reversed the decision to dismiss the constitutional challenge to the open-carry ban.

The open-carry ban failed the second prong of the *Bruen* test. The state did not affirmatively prove that the challenged provisions, which regulate constitutionally-protected conduct, were consistent with "the Nation's historical tradition of firearm regulation." In the absence of a distinctly similar historical regulation that banned open or public carry altogether, the court concluded that the challenged provisions violate the Second Amendment as applied to states through the Fourteenth Amendment.

Impact: The key impact of this decision is that agencies may no longer categorically prohibit a person from openly carrying an exposed unloaded or loaded handgun on their person (e.g. visible in a belt holster) in any county, regardless of population density. In addition, agencies may still require firearm owners to apply for open-carry licenses, provided that the licensing criteria is objective and consistent with the *Bruen* standard. Open-carry licensing schemes are not per se unconstitutional, but remain vulnerable to as-applied challenges.

As of April 15, 2026, this decision has been vacated as the Ninth Circuit ordered that this case be reheard en banc.

V. *California Apartment Assn. v. City of Pasadena*, 117 Cal.App.5th 187 (2025)

Holding: Pasadena's voter-approved Measure H is a valid exercise of the local initiative power as a charter amendment and is not an impermissible charter revision. The Measure's requirements governing the composition of the rental housing board do not violate the state constitutional prohibition on property qualifications or the equal protection clauses of the California and United States. However, Measure H's provisions requiring relocation assistance triggered by lawful rent increases and provisions imposing additional procedural requirements on unlawful detainer actions are preempted by state law and thus void.

Facts and Background: In November 2022, Pasadena voters approved Measure H, a charter amendment aimed at rent stabilization and tenant protections. The Measure states that its purpose "is to promote neighborhood and community stability, healthy housing, and affordability for renters in Pasadena by regulating excessive rent increases and arbitrary evictions to the maximum extent permitted under California law…." (Pasadena Charter art. XVIII § 1801.)

Measure H does several things at once. It caps rent increases for certain pre-1995 multifamily units, it requires just cause for eviction, and it creates an independent Rental Housing Board ("Rental Board").

The Rental Board is composed of eleven members appointed by the City Council, seven of whom must be tenants without a material interest in rental property, and four at-large members who may be any Pasadena residents. The Rental Board has authority to administer and enforce the provisions of Measure H. It is authorized to set allowable rent increases, adjudicate petitions for rent adjustments, establish and maintain a rental registry, promulgate regulations, impose fees, and otherwise implement the measure. Measure H provides that the Rental Board "shall be an integral part of the government of the City, but shall exercise its powers and duties under this Article independent from the City Council, City Manager, and City Attorney…." (Pasadena Charter art. XVIII § 1811(m).)

After Measure H passed, the California Apartment Association and several individual landlords filed a lawsuit. They alleged that Measure H constituted an impermissible charter revision, imposed unconstitutional property qualifications for public office, violated the equal protection clauses of California and the United States, and conflicted with state law. The trial court rejected most of these claims but found limited preemption as to certain notice provisions. Petitioners appealed.

Analysis: The Court of Appeal began by addressing the central question of whether Measure H constitutes an amendment or a revision of the City's Charter. The distinction is significant because the initiative power extends only to amendments. (Cal. Const., art. II, § 8, subd. (a).) Therefore, the Constitution may be amended but not revised by initiative because a constitutional revision requires more formality, discussion, and deliberation than is available through the initiative process.

To answer this question, the court assessed the quantitative and qualitative effects of Measure H on the existing governmental framework.

On the quantitative side, the court found that the number of changes alone was not determinative. Petitioners had leaned heavily on the Supreme Court's decision in *McFadden v. Jordan* (1948) 32 Cal.2d 330 (*McFadden*)), where a proposed amendment was ruled to be an impermissible revision, in part because of the substantial quantity of changes proposed; the initiative there proposed to add 21,000 words to a then-55,000-word Constitution. Petitioners here argued that Measure H added more than 18,000 words to a Charter that previously contained approximately 24,000 words and was therefore akin in scope to *McFadden* and should be struck down as an impermissible revision. The court acknowledged the size of the addition but found that length alone was not determinative, and emphasized that Measure H addressed the single subject of housing. Moreover, Measure H added to the Charter but did not delete or alter preexisting provisions. Measure H therefore bears little resemblance to the proposed amendment in *McFadden*, where the initiative spanned a "wide and diverse range of subject matters" and would have significantly altered existing constitutional provisions.

On the qualitative side, the court rejected Petitioners' contention that Measure H fundamentally restructured Pasadena's council-manager form of government by transferring core legislative and executive authority to the unelected Rental Board. The court reasoned that although the Rental Board exercises significant authority, that authority is confined to the limited domain of housing matters and does not displace the City Council's general legislative power or the City Manager's administrative power. The Charter already vests power in the City Council "subject to the provisions of this Charter,"(Pasadena Charter art. IV § 409) and Measure H operates within that structure and does not rewrite it.

The court also noted that the delegation of rule-making power to specialized bodies is not unique in municipal governance. Pasadena's own municipal code extends such rule and regulatory power to, among others, the finance director, the retirement board, and the tax administrator. The Rental Board is not an outlier simply because it has meaningful responsibilities. Further, Measure H authorizes judicial review of the Rental Board's actions and acknowledges that courts may invalidate it provisions.

The court also held that the Board's budget authority, compensation structure, and removal procedures, which differ from those applicable to other boards, did not "necessarily or inevitably" alter the City's basic governmental framework.

Turning next to the state constitutional claim, the court addressed whether reserving seven Rental Board seats exclusively for tenants violates article I, section 22, which provides that "[t]he right to vote or hold office may not be conditioned by a property qualification." (Cal. Const., art. I, § 22.) The court concluded that the term "property qualification" refers to ownership of real property, not to leasehold interests or other forms of property. The provision was intended to prevent exclusion of individuals who did not own land, not to prohibit all eligibility criteria tied to economic or housing status. Because Measure H does not require real property ownership, it does not violate the constitutional prohibition.

The court declined to adopt Petitioners' reverse theory that the Constitution also prohibits disqualifying individuals because they do own property. The court noted that no authority supports such an "inverse property qualification" theory and even so, Measure H does not categorically exclude property owners from the Board.

Petitioners' equal protection claim also failed. Because landlords and property owners are not a suspect class and because there is no fundamental right to serve on this type of board, the court applied rational basis review. Under the deferential standard, the court examined whether there is any rational relationship between the disparity of treatment and a legitimate governmental interest. The court concluded that reserving a majority of seats for tenants is rationally related to the City's interest in regulating rental housing and ensuring representation of the majority of the City's population who are renters and who are most directly affected by rent stabilization policies.

Finally, the court addressed preemption and agreed with Petitioners that certain provisions of Measure H conflict with state law. First, the requirement that landlords pay relocation assistance when increasing rent on units exempt from rent control conflicts with the Costa-Hawkins Rental Housing Act because it burdens conduct the statute expressly permits and therefore frustrates the purpose of the Act. Second, Measure H adds steps to the process for unlawful detainer actions that the court found add an extra procedural barrier for landlords and thus conflict with the procedures outlined in the Unlawful Detainer Act. Therefore, both provisions are preempted and void.

Impact: The decision reinforces the breadth of the local initiative power in charter cities, even where those initiatives create independent bodies with substantial authority, as long as they do not fundamentally alter the framework of existing government. The court's interpretation of the property qualification clause gives cities firmer footing to structure housing-related boards with tenant-majority representation without running afoul of constitutional provisions, and potentially to structure other types of boards favoring a certain stakeholder classes if sufficient legislative findings can be made. At the same time, the opinion underscores that local regulation in the housing space remains constrained by state law, particularly where local measures burden rights affirmatively granted by statute. Efforts to protect tenants from economic displacement due to rent increases on Costa-Hawkins-exempt units must be carefully reviewed and may be vulnerable, and additional procedural requirements in the unlawful detainer process may be preempted.

VI. *City of Gilroy v. Superior Court of Santa Clara County*, 19 Cal.5th 38 (2026)

Holding: The California Public Records Act ("CPRA") authorizes declaratory relief in some circumstances in which an agency has already disclosed all nonexempt records responsive to a records request, including situations in which an agency is likely to repeat past conduct that allegedly violates the CPRA in response to future records requests.

In addition, the CPRA does not impose a duty upon public agencies to preserve responsive records to a public records request that has been withheld as "exempt" for a period of three years, commencing from when a public agency invokes a statutory exemption to withhold the records.

Facts/Background: This case arose from multiple CPRA requests made by the Law Foundation of Silicon Valley ("Law Foundation"), a nonprofit legal services organization, to the City of Gilroy ("City") between 2018 and 2019 seeking all records related to police enforcement at homeless encampments, including the disclosure of police body-worn camera footage.

The City released some responsive records but withheld its video and audio recordings of police encampment sweeps occurring on or after January 1, 2016, under the investigative exemption in CPRA section 7923.600. Following the City's initial denial of the requests, the Law Foundation threatened legal action. Due to the Law Foundation's stated threat, the City, still contending that the bodycam footage was exempt from disclosure, released bodycam footage from encampment sweeps that were unrelated to citations or arrests.

Then the City informed the Law Foundation that all responsive, nonexempt records had been disclosed and that bodycam footage taken before early 2018 had been destroyed pursuant to its records retention policy, which required bodycam footage to be retained for one year.

The Law Foundation did not dispute that the City produced all responsive, nonexempt records, but nonetheless sought a writ of mandate requesting, in relevant part, a declaration that the City mishandled the CPRA requests and "failed to produce responsive records that existed at the time and were subsequently destroyed."

The trial court granted the Law Foundation partial declaratory relief. However, the Court of Appeal reversed, concluding that, since no further records could be ordered for disclosure because they had been destroyed, the Law Foundation could not obtain relief and that their CPRA requests were moot. Subsequently, the Law Foundation sought and was granted review by the California Supreme Court.

Analysis: The California Supreme Court analyzed (1) whether the CPRA authorizes courts to grant declaratory relief for violations of its provisions when it is undisputed that an agency has disclosed all responsive nonexempt existing records, and (2) whether the CPRA requires agencies to preserve records for three years from the date the exemption is invoked.

As to the first issue, the Court held the CPRA authorizes declaratory relief for CPRA violations in some circumstances, including when an agency has disclosed or destroyed all responsive, nonexempt records. The Court rejected the City's arguments, and the Court of Appeal's decision, supporting a narrow interpretation of CPRA Section 7923.000 such that declaratory relief would not be available if all responsive non-exempt documents had been produced. In its reasoning, the Supreme Court noted that the CPRA allows courts to clarify agencies' legal obligations to resolve ongoing disputes in a manner that minimizes the likelihood of affecting future public records requests and advances the CPRA's purpose of "increasing freedom of information." Relying on CPRA Section 7923.000, which allows a person to initiate proceedings "to enforce that person's right under [the CPRA] to inspect or receive a copy of any public record or class of public records," the Court concluded this language applies to pending or future requests.

Regarding the second issue presented, the Court held that the CPRA does not impose a three-year retention period commencing when an agency asserts an exemption to withhold records. The Court highlighted the fact that the text of the CPRA contains no language requiring record preservation, despite being a "detailed" statute. The CPRA's legislative history also indicates that the Legislature did not perceive it as imposing a retention requirement. Additionally, the existence of retention periods in other laws related to records frequently requested through CPRA litigation, along with penalties for spoliation in legal cases, alleviates concerns about the lack of a retention requirement. This supports the conclusion that omitting a preservation obligation in the CPRA was deliberate.

The Supreme Court reversed the Court of Appeal's judgment to the extent it unduly limited the scope of declaratory relief available under the CPRA and remanded the case for further proceedings consistent with its opinion.

Impact: Public agencies should be aware that disclosing requested records may not immunize them from potential CPRA litigation seeking declaratory relief. Prevailing requesters may be entitled to recover reasonable attorneys' fees under the CPRA. Although a public agency is not legally required to retain records under the CPRA, public agencies should adhere to records retention obligations in other statutes. Additionally, public agencies should implement litigation holds to prevent the destruction of records when litigation is reasonably anticipated.

VII. *City of San Jose v. Howard Jarvis Taxpayers Association*, 18 Cal.5th 1106 (2025)

Holding: Unfunded pension liabilities arising from a city's legal duty to maintain an actuarially sound retirement system are obligations imposed by law. Accordingly, debt incurred to satisfy those liabilities falls outside the California Constitution's debt limitation.

Facts/Background: Article XVI of the California Constitution prohibits cities from incurring indebtedness or liability exceeding their income and revenue for that year unless approved by two-thirds of voters. *See*, Cal. Const., art. XVI § 18, subd(a)). However, the debt limitation does not apply to indebtedness or liability incurred to fulfill obligations imposed by law. *See*, *County of Los Angeles v. Byram* (1951) 36 Cal.2d 694 (1951).

The City of San Jose's (the "City") charter requires the city council to provide for the creation, establishment, and maintenance of a retirement plan for all City employees.

The City identified a significant unfunded liability arising when the value of the retirement plan's assets fell below the present value of benefits already earned by employees and retirees.

Initially, the City addressed this shortfall through lump-sum annual payments. However, after receiving analysis cautioning that increases to the annual payments threatened to erode capacity for other City services, the City sought to finance the liability through the issuance of pension obligation bonds.

The City filed a validation action, and Howard Jarvis Taxpayers Association ("HJTA") filed an answer arguing that voter approval of the bonds was required. The trial court concluded that the unfunded liability was an obligation imposed by law and therefore exempt from the constitutional debt limitation. The Court of Appeal affirmed on the grounds that the debt limitation was not triggered because the liability did not constitute new debt.

Analysis: The California Supreme Court affirmed the Court of Appeal's decision on the grounds that the City's unfunded pension liability constituted an obligation imposed by law. Under the City's charter, the City was required to establish and maintain a retirement plan, and under state law, such systems must be maintained on a sound actuarial basis.

The Court rejected HJTA's argument that this obligation was merely voluntary because the City chose to offer pensions. It explained that once the City established a retirement system, it became legally bound by both charter and state law to fund that system in accordance with actuarial requirements. The City therefore could not avoid the underlying financial obligations calculated by its retirement board.

The Court also rejected HJTA's argument that the obligation-imposed-by-law exception to the debt limitation applies only if the specific funding mechanism used is legally mandated. It clarified that the City's burden was to demonstrate that the unfunded liability is an obligation imposed by law, not that the particular method it chose to fulfill that obligation was mandated by law. Decisions regarding how to address the obligation fall within the City's discretion.

Because the City's duty to maintain an actuarially sound pension system was imposed by law, its efforts to meet that obligation are not considered voluntary for purposes of the debt limitation.

The Court declined to decide whether the bonds would constitute "new" debt, reasoning that even if they did, they would fall within the exception for obligations imposed by law.

Impact: The decision clarifies that where a city is legally required to maintain a retirement system on an actuarially sound basis, unfunded pension liabilities constitute obligations imposed by law and therefore fall outside the California Constitution's debt limitation. As a result, a city does not need voter approval to incur indebtedness used to address those liabilities, even if it does so through instruments such as pension obligation bonds.

The ruling does not endorse any particular financing mechanism, instead emphasizing that the analysis turns on whether the underlying liability is mandatory, while leaving cities the discretion to determine how best to satisfy that obligation.

Although the Court relied on the City's charter and statutory provisions specific to municipal retirement systems, the reasoning suggests that the same analysis may apply where other public entities are subject to comparable legal requirements to fund pension systems on an actuarially sound basis.

VIII. *Disney Platform Distribution Inc. v. City of Santa Barbara*, 118 Cal.App.5th 238 (2026)

Holding: An existing city tax on "video services" can be applied to internet-based video streaming services, such as those provided by Disney Platform Distribution, BAMTech, and Hulu, consistent with the voters' intent to apply such a tax to all types of telecommunication. The application of a video service tax to streaming services does not violate the federal Internet Tax Freedom Act, the First Amendment, or Article XIII C of the California Constitution (Proposition 218). Finally, a city is not required to provide notice under Public Utilities Code section 799 before enforcing a previously enacted tax on a tax base.

Facts / Background: In 2008, the City of Santa Barbara (the "City") enacted Ordinance 5471, approved by voters as Measure G, which modernized the City's utility users tax regime and imposed a 5.75% tax on "video services." The ordinance defined "video services" broadly, with the definition in the ordinance including video programming delivered "using one or more channels" by a "video service supplier." The ordinance explicitly stated that the tax applied "regardless of the technology used."

Disney Platform Distribution, BAMTech, and Hulu (the "appellants") provide subscription-based streaming services delivering live and on-demand video content over the internet. These services are available to taxpayers in the City. In 2022, the City issued notices of deficiency to appellants for unpaid video users' taxes covering the period from 2018 to 2020. The unpaid taxes plus penalties and interest equaled $68,950 for Disney Platform Distribution, $37,270 for BAMTech, and $506,117 for Hulu.

Appellants appealed to the City Administrator, but the hearing officer upheld the City's tax assessment. Appellants then sought judicial review, arguing that the ordinance does not apply to streaming services because streaming providers do not provide "channels," that application of the tax violates the Internet Tax Freedom Act, that the tax infringes the First Amendment, that enforcement of the tax constituted an unapproved tax increase under Proposition 218, and that the City failed to comply with statutory notice requirements under Public Utilities Code section 799.

Analysis: The Court first assessed whether streaming platforms fall within the ordinance's requirement that video services be delivered via "one or more channels." Appellants urged for the application of a technical definition derived from federal telecommunications law, the Cable Communications Policy Act of 1984, under which a "channel" is a physical transmission path controlled by the provider. The Court rejected this approach, emphasizing that voter-approved tax measures must be interpreted according to the electorate's intent, using ordinary and commonly understood meanings unless a technical definition is clearly indicated. Neither the ordinance nor the ballot materials signaled that "channel" should be interpreted using its technical definition.

Instead, the Court adopted the ordinary meaning of "channel" as a source of programming (e.g., ESPN or CNN). This interpretation was reinforced by the ordinance's express statement that it applies "regardless of the technology used" and by ballot materials emphasizing modernization and technological neutrality. Excluding streaming services would undermine the ordinance's stated goal of closing loopholes and ensuring equal treatment among providers of comparable video content.

Next, appellants contended that the tax discriminates against electronic commerce in violation of the federal Internet Tax Freedom Act (the "Act") because it applies to streaming services but not to offline DVD rentals or sales. The Court disagreed, concluding that streaming subscriptions and DVD purchases are not "similar" transactions under the Act. The Court emphasized the distinction between services and tangible goods; streaming provides access to content as a service, whereas DVDs are physical items subject to sales and use taxes. Because the transactions are not equivalent, the absence of an equivalent video users' tax on DVDs does not constitute discriminatory treatment. The Court also noted that DVD sales are already subject to sales tax, and imposing an additional tax could result in impermissible double taxation.

The Court then rejected appellants' argument that the ordinance is a content-based regulation on speech in violation of the First Amendment. While acknowledging that video programming constitutes protected speech, the Court found the tax to be content-neutral. It applies uniformly to video services regardless of the message, subject matter, or viewpoint of the programming. There was no evidence that the ordinance was enacted to suppress particular ideas or speakers, nor did its structure suggest such an intent.

Appellants also argued that the City's decision to begin enforcing the tax against streaming providers constituted an expansion of the tax base without voter approval in violation of Proposition 218. The Court disagreed, holding that delayed enforcement of an existing tax does not amount to a change in tax methodology or an expansion of the tax base requiring voter approval. Relying on *AB Cellular LA, LLC v. City of Los Angeles* (2007), 150, Cal.App.4th 747, the Court distinguished between altering the formula used to calculate a tax and simply applying an unchanged formula to entities already encompassed within its scope. Because the ordinance always covered steaming service providers via its broad definition of "video services," the decision to begin enforcement did not violate Proposition 218. This was true even though the subject video streaming services largely didn't exist at the time the Ordinance was adopted.

Finally, the Court held that the City was not required to provide notice under Public Utilities Code section 799, which generally requires local jurisdictions to notify public utilities following enactment of a new tax, because the City's decision to enforce the tax was not equivalent to enacting a new tax or modifying an existing one. The statute's notice requirements are triggered by legislative changes, not by enforcement actions. As the Court had already determined that the City had not adopted a new tax or altered the tax base, the City's collection effort was merely an enforcement action and did not constitute an "enactment" of a tax requiring advance notice.

Impact: For cities, this decision represents a significant affirmation of local government authority to apply legacy video service taxes to modern streaming platforms, so long as the jurisdiction's voter-approved tax is broadly written to apply to all technological means of delivering the service. Importantly, the court emphasized that the delayed enforcement to services that had not paid the tax for approximately 14 years since the tax's enactment did not result in an enlargement of the tax base requiring further voter approval. By emphasizing a technology-neutral interpretation of the existing tax grounded in voter intent, cities can rely on the framework of this case to apply digital video service taxes to new forms of content delivery.

As of this writing, a petition for review is currently pending before the California Supreme Court.

IX. *Move Eden Housing v. City of Livermore*, 114 Cal.App.5th 1282 (2025)

Holding: Elections Code Section 9241 does not prohibit a legislative body from re-adopting administrative acts that are not subject to referendum.

Facts/Background: In May 2022, the City of Livermore ("City") adopted a resolution that authorized the execution of a development agreement with Eden Housing, Inc. for an affordable workforce housing project and other elements, including the City's commitment to spend $5.5 million on constructing and improving a new public park ("2022 Resolution").

Following the City's adoption of the 2022 Resolution, the respondent submitted a referendum petition challenging the 2022 Resolution. The referendum power allows voters that gather enough signatures to place a legislative enactment on the ballot for a vote.

In July 2022, the City stated that it determined the 2022 Resolution was an administrative act and therefore not subject to referendum. In August 2022, the respondent filed a petition for writ of mandate seeking to compel the City to process the referendum.

In *Move Eden Housing v. City of Livermore* (2024) 100 Cal.App.5th 263 ("*Move Eden I*"), the Court of Appeal held that the 2022 Resolution was a legislative act and subject to referendum. The Court explained that even though the 2022 Resolution largely involved administrative acts not subject to referendum, the 2022 Resolution was a legislative act because it authorized the construction of and improvements to a new public park for the first time. The Court remanded the case to the trial court with directions to issue a writ of mandate ordering the City to process the referendum petition.

After the *Move Eden I* decision, the referendum petition was processed and certified. The referendum was then presented to the City Council for a decision on whether to repeal the 2022 Resolution or place it on a ballot for voter approval. In June 2024, the City Council repealed the 2022 Resolution and then enacted a new resolution approving the same agreement approved in the 2022 Resolution, except the new resolution omitted the provisions related to the construction of and improvements to the public park ("2024 Resolution").

The respondent then moved for an order to compel the City to comply with the writ of mandate, arguing that the 2024 Resolution violated Elections Code Section 9241. This Section provides, in part, that if a city repeals an ordinance against which a successful referendum petition is filed, then such ordinance may not be re-adopted for one year.

The trial court granted the motion on the basis that the City violated Section 9241 because the City effectively repealed only part of the 2022 Resolution and the 2024 Resolution could not be enacted for a one-year period following the repeal of the 2022 Resolution.

Analysis: The Court of Appeal reversed the trial court, holding that Elections Code Section 9241 does not prohibit the re-adoption of administrative acts that are not subject to referendum.

First, the Court held that the 2022 Resolution was "entirely repealed" within the meaning of Elections Code Section 9241. The Court applied the test from *County of Kern v. TCEF* ((2016) 246 Cal.App.4th 301) to determine that the 2022 Resolution was "entirely repealed." Under the *TCEF* test, to "entirely repeal" an ordinance, an agency must: (1) revoke the protested ordinance in all its parts; and (2) refrain from additional action that has the practical effect of implementing the essential feature of the protested ordinance.

The Court found that the City revoked the 2022 Resolution in all its parts. In analyzing the second part of the *TCEF* test, the Court explained that the "essential feature" must include a legislative act that made the prior ordinance subject to challenge by referendum. The Court found that because the 2024 Resolution did not have the practical effect of undermining the repeal of the public park provisions — the only legislative act of the 2022 Resolution — the 2024 Resolution did not implement the "essential feature" of the 2022 Resolution.

Second, the Court held that the 2024 Resolution did not violate the Elections Code Section 9241 one-year stay. The Court explained that Section 9241 is part of the referendum process and must be construed accordingly. The Court further explained that applying Section 9241's stay to administrative acts would undermine essential government functions for no purpose consistent with the referendum power. The Court concluded that a city's re-adoption violates the Section 9241 stay if the city readopts one or more ***legislative*** acts in an identical or insufficiently modified form, but Section 9241 does not prohibit a city from readopting ***administrative*** acts during the one-year stay period. The Court found that because the 2024 Resolution only readopted the administrative acts from the 2022 Resolution, the 2024 Resolution did not violate the Section 9241 one-year stay.

Impact: This case affirms that Elections Code Section 9241 does not prohibit cities from re-adopting administrative acts, even if those acts were initially part of a resolution that also contained legislative acts challenged by referendum. Another takeaway from this case is that cities should separate legislative acts from administrative acts to prevent administrative acts from being included in a referendum petition. This will help ensure that projects stay on track because approvals that only include administrative acts cannot be challenged by referendum.

X. *Uber Technologies, Inc. v. City of Seattle*, 68 F.4th 1202 (9th Cir. 2026)

Holding: An ordinance that requires a company to inform its app-based workers in writing of the company's deactivation policy, and requires the deactivation policy to be reasonably related to the company's safe and efficient operations, does not compel speech in violation of the First Amendment and is not void for vagueness.

Facts/Background: Uber and Instacart rely on app-based workers for their businesses in the growing gig economy. Those workers pick up orders from restaurants and retailers, and deliver items to customers based on assignments generated by an app. But Seattle determined that some gig workers could be threatened by unwarranted deactivations of their accounts by the companies. To address instability in the gig economy and prevent unwarranted deactivations of the workers' accounts, Seattle passed the ordinance at issue in 2023. The ordinance required companies like Uber and Instacart, which provide a platform for customers to hire app-based workers, to inform app-based workers "in writing" of the companies' deactivation policies, and required the deactivation policies to be "reasonably related" to the "safe and efficient operations" of the companies. (The ordinance did not apply to certain categories of app-based workers, such as rideshare drivers.) Uber and Instacart challenged the ordinance and, in a motion for a preliminary injunction, argued that the ordinance infringed on their protected speech and was void for vagueness.

The District Court for the Western District of Washington denied the motion. The District Court held that the ordinance regulated conduct, not speech, with any effects on speech being "incidental to its worker-related conduct goals." The District Court also held that the ordinance was not void because the term "reasonable" was not vague.

Analysis: The Court of Appeals for the Ninth Circuit <u>affirmed</u> the District Court's decision. The Ninth Circuit agreed that the ordinance regulated conduct, not speech, because the ordinance was concerned only with the deactivation of workers' accounts. While some conduct may be "expressive" and therefore still entitled to First Amendment scrutiny, here, the conduct was "nonexpressive" because the ordinance aimed to keep app-based workers informed and employed and have companies devise policies that do not result in unwarranted deactivations. Essentially, the ordinance regulated a business agreement between the companies and app-based workers.

The Ninth Circuit stated that even if the ordinance regulated speech, the speech was commercial speech subject to lower scrutiny under the First Amendment. Generally, hiring communications can be commercial speech, and here, the ordinance was a hiring communication because it regulated how and when a company may prevent app-based workers from accessing the company's platform to seek employment.

Under the lower scrutiny for commercial speech, the government may compel disclosure in commercial speech as long as the compelled disclosure is reasonably related to a substantial governmental interest and involves purely factual and uncontroversial information that relates to the service provided. Here, the government had a substantial interest in protecting the health and safety of workers, and the compelled speech was purely factual and concerned only the details of the companies' deactivation policies.

Additionally, any challenge involving the regulation of commercial speech requires that the speech is not related to unlawful activity. Here, however, the speech related to what Seattle had designated as unlawful activity: the unwarranted deactivations of workers' accounts.

The Ninth Circuit also found that the ordinance was not vague when it required deactivation policies to be "reasonably related" to the safe and efficient operations of the companies because the term "reasonable" was a well-established standard and it was supplemented with examples in the ordinance. As a result, the ordinance provided fair notice to a person of ordinary intelligence as to what grounds for deactivation are reasonably related to safety and efficiency.

Impact: The major impact of this case is that it shows cities may play a somewhat greater role in shaping the growing gig economy. Cities can look to Seattle's ordinance and determine whether they would also like to regulate, to a certain extent, the business agreements between app-based workers and the companies that provide a platform for them. When drafting an ordinance for that purpose, cities must be aware of two critical issues: (1) whether the ordinance will be seen as regulating speech or nonexpressive conduct, and (2) whether the ordinance will be seen as vague. This case suggests that an ordinance will be permissible if it only aims to prevent unwarranted deactivations of app-based workers' accounts and provides fair notice as to what grounds for deactivation are reasonable.