General Municipal Litigation Update

2026 City Attorneys Spring Conference League Of California Cities

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

- **FACTS -** To create additional land for housing, the City declared a City-owned property being used as a parking garage constituted surplus land under "Surplus Land Act." Conducted studies showing much of it was unused and it needed substantial repairs.
- **CHALLENGE –** local business and property owners argued the property could not be surplus land because it still served *some* public purpose.
- **HOLDING –** Substantial administrative record demonstrated:
  1) City's other parking facilities could meet its needs,
  2) parking structure needed extensive repairs,
  = adequate evidentiary support it was surplus land.

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

TAKEAWAYS:

- ”The purpose of the most recent amendments to the Surplus Land Act is to advance this state’s affordable housing priorities.”
- When designating surplus land, create an evidentiary record that focuses on whether the property is essential to an agency’s use. Do not have to show the property serves “no use to the public.”

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

- **FACTS:**
  - 1) Measure Y was a citizens' initiative parcel tax (~$12M/yr) for zoo operations,
  - 2) named Conservation Society of California as "Zoo Operator" and assigned it duties.
- **CHALLENGE:** Taxpayer association said violated Article II, Section 12 of the California Constitution by naming the Conservation Society and conferring functions, powers, and duties upon it; .
- **HOLDING:**
  - Naming a private corporation and conferring duties on it is unconstitutional. Other provisions are severable because of a severability clause. Government support does not equal a government initiative.

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

- **TAKEAWAYS**
  - Designate a role, not a named entity when channeling funds through private operator.
  - Have a severability clause.
  - Okay to have government support as long as it is a citizen's initiative.

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

- **FACTS -** San Diego voters approved Measure C (Tax increase for homelessness, infrastructure, and convention center funding) by approximately 65%, with bonds repaid from the new tax revenues. City filed a validation action.

- **CHALLENGE –** Local taxpayer organization challenged whether the measure was a "bona fide" citizens' initiative and introduced evidence of one of its proponents who said the "City had substantial control over initiative." This is critical because citizen-led special tax initiatives require only a simple majority, not the two-thirds vote required for government-sponsored taxes. Also challenged the funding.

- **HOLDING –** City did not assert "substantial control" over initiative when individual proponents public notice of intent, file the notice, and submitted petitions. Language in measure stating that payments on the bonds issued would be made from the measure's "special taxes" and not add to "general obligations" of City.

RWG LAW

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

TAKEAWAYS:

- 1. Just because a local government entity or official supports an initiative, does not convert it into a government-sponsored measure.
- 2. Language in measure will not violate constitutional debt limitations if bonds are paid by the measures own special tax funds.
- 3. Validate bond authorizations upfront, reducing litigation uncertainty and supporting financing.

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Baird v. Bonta, 163 F.4th 723 (9th Cir. 2026) (1/2/2026) (decision vacated; panel ordered en banc hearing)

- **FACTS –** California's open carry licensing scheme allows for licenses only in counties of less than 200,000 people. This effectively bans 95% of Californians from open-carry.
- **CHALLENGE –** fails the "Bruen" test in that the regulation is not "consistent with the Nation's historical tradition of firearm regulation."
- **HOLDING:**
  - After a historical reading of the record "Open carry is unquestionably part of our Nation's History and tradition of "the right to keep and bear arms" … "stretching back to the founding." Prohibition on issuance of open-carry licenses in populous jurisdictions constituted effective ban and failed *Bruen* test

RWG LAW

Baird v. Bonta, 163 F.4th 723 (9th Cir. 2026) (1/2/2026) (decision vacated; panel ordered en banc hearing)

- **TAKEAWAYS –**
- 1. 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.
- 2. 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.
- 3. open-carry licensing schemes are not per se unconstitutional, but remain vulnerable to as-applied challenges.

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

- **FACTS:** Voters approved Measure H, a city charter amendment establishing rent stabilization for certain units, just cause eviction protections, and an independent Rental Housing Board with regulatory authority over rental housing

- **CHALLENGE:**
- 1) initiative was an unconstitutional revision to the City Charter;
- 2) condition that rental housing board members must be "tenants" violated California and U.S. Constitutions;
- 3) State law pre-empted several provisions, *e.g.*, relocation assistance and additional notice requirements prior to evictions.

RWG LAW

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

- **HOLDING/ TAKEAWAYS:**
- 1) Measure H is a valid exercise of the local initiative power as a charter amendment, not an impermissible revision because in its entirety, does not change "nature of our basic governmental plan"
- 2) Upheld the Rental Board's tenant-majority requirement as constitutional where property owners are not excluded, because California Constitution only bars qualification where conditioned on the ownership of a property interest
- 3) Relocation assistance tied to lawful rent increases preempted by state law (Costa Hawkins Act)
- 4) Additional eviction notice requirements conflicting with the Unlawful Detainer Act.

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

- **FACTS:** A nonprofit made multiple CPRA requests 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, then .

- **CHALLENGE:** Nonprofit sought a writ of mandate requesting a declaration the City "failed to produce responsive records that existed at the time and were subsequently destroyed."

- **HOLDING:** the CPRA authorizes declaratory relief in some circumstances in which an agency has already disclosed all nonexempt records responsive to a records request. However, the CPRA does not impose a three-year retention period commencing when an agency asserts an exemption to withhold records.

RWG LAW

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

- **TAKEAWAYS:**
- **1)** when an agency withholds a responsive record, the agency must justify its withholding by demonstrating the record is exempt under CPRA or public policy reasons.
- **2)** even though the CPRA does not have preservation requirements, there may be other bases for preservation
- **3)** public agencies should adhere to records retention obligations in other statutes, and **implement litigation holds to prevent the destruction of records when litigation is reasonably anticipated.**

City of San Jose v. Howard Jarvis Taxpayers Association, S285426 (12/18/2025)

- **FACTS:** City charter required City to establish and maintain retirement plan on sound actuarial basis. City issued pension obligation bonds without voter approval to address unfunded pension liability.
- **CHALLENGE:** voter approval of bonds per Article XVI of the California Constitution prohibits cities from incurring liability exceeding income or revenue
- **HOLDING:** Unfunded pension liability constitutes obligation imposed by law and is exempt from constitutional debt limitation.

City of San Jose v. Howard Jarvis Taxpayers Association, S285426 (12/18/2025)

- **TAKEAWAY:**
- 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.
- 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, leaving cities the discretion to determine how best to satisfy that obligation.

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

- **FACTS:** Santa Barbara's 2008 ordinance imposed a 5.75% tax on "video services," approved by voters, that applied to video programming delivered using one or more channels by a video service supplier. The ordinance stated that the tax applied regardless of the technology used.

- **CHALLENGE:** Disney Platform Distribution, BAMTech, and Hulu challenged the application of the tax to streaming services, definition of "channels," First Amendment, and other grounds.

- **HOLDING:** Streaming services fall within the ordinance's definition of video services, the tax does not violate the Internet Tax Freedom Act or the First Amendment, and the application of the ordinance to streaming services is not a new tax.

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

- **TAKEAWAY:** 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.

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

- **FACTS:** City adopted a resolution authorizing execution of development agreement for housing project, including City's financing of park. An advocacy group "Save Livermore Downtown" submitted referendum petition challenging resolution. Court found that the park provision was a legislative act subject to referendum. City Council repealed resolution and enacted new resolution approving same agreement but without park provisions the first court took issue with.
- **CHALLENGE:** Local advocacy group challenged the new resolution under **Elec. Code § 9241: 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.**
- **HOLDNG:** Elec. Code § 9241 does not prohibit a legislative body from re-adopting administrative acts that are not subject to referendum.

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

- **TAKEAWAY:**
- 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.

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Uber Technologies, Inc. v. City of Seattle, 168 F.4th 1202 (9th Cir. 2026)

- **FACTS –** Seattle passed an ordinance requiring companies like Uber and Instacart to inform app-based workers "in writing" of the companies' deactivation policies, Required the deactivation policies to be "reasonably related" to the companies' "safe and efficient operations."

- **CHALLENGE -** Uber and Instacart challenged Seattle's ordinance, arguing that it infringed on their First Amendment protected speech and was vague.

- **HOLDING --** District Court upheld Seattle's ordinance. Court of Appeals affirmed: the ordinance regulated non-expressive conduct, not speech, and it was not vague because it provided fair notice as to what grounds for deactivation are reasonably related to safety and efficiency.

Uber Technologies, Inc. v. City of Seattle, 168 F.4th 1202 (9th Cir. 2026)

- **TAKEAWAYS:**
- Cities may play a somewhat greater role in shaping the growing gig economy --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 whether the ordinance will be seen as regulating speech or non-expressive conduct, and whether it provides fair notice as to what grounds for deactivation are reasonable.

Thank you!

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