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Newsletter | Winter 2024

Update on Public Law

Supreme Court Grants Pre-Election Review of Taxpayer Protection Act

By Michael G. Colantuono, Esq.

The California Business Roundtable's "Taxpayer Protection and Government Accountability Act" qualified for the November ballot. It would impose many new restrictions on State revenues and essentially all local revenues, from taxes to library fines to water rates. It requires two-thirds voter approval for all special taxes, whether proposed by legislators or initiative petition, reversing six recent decisions allowing such taxes by majority vote.

The California Business Roundtable removed a very similar measure from the 2018 ballot in exchange for a multi-year ban on local soda taxes and may have intended to trade this measure for a ban on vehicle-miles-travelled taxes. Rather than bargain, the Legislature responded with two attacks on the measure.

First, the Legislature sued in the California Supreme Court for a writ of mandate ordering Secretary of State Shirley Weber to withhold the measure from the ballot. Such petitions are very rarely granted, as it is the role of the California Supreme Court to decide important legal issues on appeal, not as the first court to hear them. However, the petitioners, with support from several local government associations as amicus curiae, persuaded the Court to issue an order to show cause. That invited briefing and argument of the merits. The Court has ordered briefing in December and January, with responses to amicus briefs due February 14th. The matter will likely be argued in March or April and a decision is likely by the June deadline to print November ballots.

Legislature v. Weber raises two issues. First, petitioners argue the measure revises the State Constitution—which an initiative cannot do—rather than amends it. This is because the measure strips the Legislature and the Executive branch of important powers—requiring voter approval of all taxes, and requiring legislative action on all fees, even the fee to replace a driver's license.

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Welcome, Sergio Ordaz!

CHW is pleased to welcome Sergio C. Ordaz. Sergio got his law degree at night while working full time as a litigation paralegal and raising a family. He passed the Bar and has two years' recent experience in state and federal courts defending local governments in a wide range of cases—from dangerous conditions of property, to civil rights claims, police liability defense and wage and hour claims.

A first generation professional, Sergio has degrees from East LA College, Cal State LA, and the Glendale University College of Law.

Sergio joins our Pasadena office. Welcome Sergio!

2024 Housing Legislation — Continued Erosion of Local Control

By Matthew T. Summers, Esq.

The Legislature continues to focus on housing and affordable housing development, despite cities' and counties' defense of local control. Among 20-odd housing bills last year, new legislation expands Senate Bill 35's streamlined approval process for in-fill housing projects, expands density bonuses, and adds a new CEQA exemption for housing. Higher education and religious institutions can also now build affordable housing without a zoning change.

With 2017's Senate Bill 35, the Legislature barred discretionary review of two-or-more-unit residential or mixed-use in-fill projects in jurisdictions failing to make sufficient progress towards their regional goals for affordable housing production. Projects must meet affordability requirements and the city's or county's objective development standards, and pay prevailing wages for construction. Senate Bill 423 (Wiener, D-San Francisco) extends SB 35's sunset to 2036 and expands it to any jurisdiction which did not adopt a substantially compliant housing element—as determined by the state Department of Housing and Community Development. The bill also expands SB 35 to parts of the Coastal Zone, limits SB 35's skilled and trained workforce (i.e., union labor) requirement, and limits project review under objective design standards to staff-level reviews, barring hearings before planning commissions, city councils, and boards of supervisors.

New density bonus legislation, Assembly Bill 1287 (Alvarez, D-San Diego), allows new, "stackable" density bonuses for qualifying projects with at least a 50% density bonus if the developer provides extra very-low income or moderate-income units—allowing up to a 100% bonus (i.e., double the density otherwise permitted). The bill also allows those extra, moderate-income, affordable units to be rentals.

AB 761 (Alvarez, D-San Diego) provides a new CEQA exemption for certain 100% affordable housing projects. Projects must pay prevailing (i.e., union) wages, meet (union) labor standards, and develop infill sites or sites near transit or such amenities as schools or grocery stores. The exemption covers project approval, but also pre-approval actions, such as leasing land.

Adding to the Legislature's broad approach to housing, Senate Bill 4 makes certain housing projects by-right uses on lands owned by independent higher education and religious institutions, whether or not in compliance with zoning. Nicknamed the "yes in God's backyard" bill, it requires qualifying projects to develop infill sites, provide 100% affordable units, pay prevailing wages, and meet labor standards (again, use union labor), and not be in defined sensitive locations, applying similar standards as 2017's SB 35. Cities and counties can still enforce objective development standards, but cannot require a zoning or general plan amendment for such residential uses.

California's housing affordability crisis continues and, so long as it is top-of-mind for California voters, the Legislature will need to at least appear to be doing something about it. Eroding local control is easier than building housing, so this legislative trend can be expected to continue.

For more information, please contact Matt at msummers@chwlaw.us or (213) 542-5700.

Welcome, Julia Cohene!

Julia Cohene joins our Pasadena office as an associate handling a mix of litigation and advisory assignments. She had been a research attorney for the Los Angeles Superior Court supporting busy civil trial departments. Such works provides very firm grounding in litigation procedure.

Her cases suit her well for our advisory practice, too, including real estate, elections and public employment disputes, among others.

Julia had an earlier career in the arts in Los Angeles, New York, and Berlin, receiving a B.S. in Studio Art from Skidmore College before attending UC Irvine's Law School.

Welcome, Julia!

Surplus Land Act Now (Expressly) Applies to Leases

By Gary B. Bell, Esq.

Effective January 1, 2024, the Surplus Land Act expressly applies to leases for longer than 15 years, including options to extend or renew, unless no development or demolition will occur. The Governor signed Senate Bill No. 747 (Caballero, D-Merced) to approve the changes. The Act requires local agencies—including cities, special districts, school districts, counties, joint powers authorities, RDA successor agencies, housing authorities, and other political subdivisions—to offer surplus land to affordable housing developers and other public agencies before selling (and now, leasing) land to any other party.

The Act previously applied to a local agency's decision to "dispose" of real property without defining that word, although several provisions of the law suggested the Legislature intended to limit it to sales. For example, before the most recent amendment, the penalty for disposing of real property in violation of the Act was "30 percent of the final sale price." The legislative history of another recent amendment to the Act—2019's Assembly Bill No. 1486 (Ting, D-San Francisco)—seemed to support this conclusion. As introduced, that bill defined "disposed of" to mean "sell, lease, transfer, or otherwise convey any interest in real property." The version the Governor signed into law omitted that definition.

Following approval of the 2019 statute, the Department of Housing and Community Development adopted "Surplus Land Act Guidelines" defining "disposition of surplus land" as "sale or lease of local agency-owned land formally declared surplus." This led to disagreement over the Act's scope, which SB 747 resolves at the expense of local control.

With leases now squarely within the Act's definitions, local agencies should familiarize themselves with the Act's procedures and exemptions before leasing real property to a tenant for more than 15 years.

The Act maintains its penalties, now also applicable to leases, as "30 percent … of the discounted net present value of the fair market value of the lease as of the date the lease was entered into."

Look for further developments in this area of the law.

For more information, please contact Gary at GBell@chwlaw.us or (916) 400-0370.

Taxpayer Protection Act

(cont. from page 1)

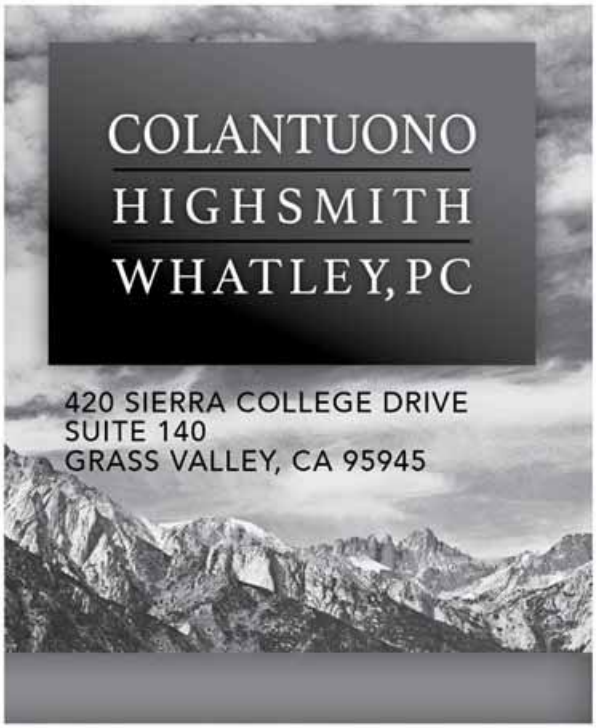
Second, they argue the measure would impair essential governmental powers; here, the power to impose taxes, delegate fee-making procedures to the Executive branch, and for that branch to fully administer financial aspects of government programs.

CHW filed amicus letters in support of pre-election review on behalf of seven local government associations and will file an amicus brief on the merits for these and other amici in late January.

The Legislature's second reaction to the measure is ACA 13 (Ward, D-San Diego). Also slated for the November 2024 ballot, that constitutional amendment would provide that any ballot measure to impose a supermajority voting requirement cannot pass unless it attains that same supermajority. As ACA 13 is retroactive, if a simple majority of voters approve it, the California Business Roundtable measure will require two-thirds voter approval. As the measure has drawn strong opposition, that may not be attainable.

Stay tuned!

For more information, please contact Michael at MColantuono@chwlaw.us or (530) 432-7357.



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