



PASADENA

GENERAL MUNICIPAL LITIGATION UPDATE

League of California Cities
2019 City Attorneys' Department Conference
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Overview

General Municipal Litigation Update – May 2019

- 9-8-1 in favor of positions favoring public entities
 - > Public Records / Open Meetings (4-1)
 - > Finance (0-1)
 - > Anti-SLAPP Statute (0-1)
 - > Employment (1-1)
 - > Land Use / CEQA (1-1-1)
 - > Civil Rights (3-3)





Public Records / Open Meetings

General Municipal Litigation Update – May 2019

- *National Lawyers Guild v. City of Hayward* (police video)
- *Associated Chino Teachers v. Chino Valley Unified School Dist.* (employment records)
- *Anderson-Barker v. Superior Court* (contractor's records)
- *Preven v. City of Los Angeles* (Brown Act)
- *TransparentGov Novato v. City of Novato* (Brown Act)



- Public records request for records relating to demonstration
- \$2,939.58 invoice – 232 minutes of seven redacted videos
 - > Costs requested under Government Code Section 6253.9(b)(2) (costs recoverable where extraction is needed to produce electronic records)
- \$308.89 invoice – videos of officers at three specific time periods



National Lawyers Guild v. City of Hayward (cont.)

General Municipal Litigation Update – May 2019

- Trial court granted writ petition
- “Extraction” of electronic record does not include taking out exempt information





National Lawyers Guild v. City of Hayward (cont.)

General Municipal Litigation Update – May 2019



- Court of Appeal reversed
- City can recover its costs in constructing disclosable video
 - > Special computer services
 - > Programming



- School district received two complaints from parents/guardians of girls' high school volleyball team
- School district provided complainants with written disposition
 - > Copy of disposition letters not placed in teacher's personnel file



Associated Chino Teachers v. Chino Valley USD (cont.)

General Municipal Litigation Update – May 2019

- Local newspaper requested disposition letters
 - > School district informed teacher of intent to disclose
 - > Union objected to disclosure, and brought suit
- Trial court denied writ petition
- Court of Appeal reversed



Associated Chino Teachers v. Chino Valley USD (cont.)

General Municipal Litigation Update – May 2019

- Appeal not moot even though complainants received disposition letters
- Disposition letters are personnel or other similar records exempt from disclosure
- Disclosure of disposition letters would compromise teacher's significant privacy interests, which outweigh public interest in disclosure





Associated Chino Teachers v. Chino Valley USD (cont.)

General Municipal Litigation Update – May 2019

<i>BRV v. Superior Court</i> , 143 Cal.App.4th 742 (2006)	Supt.	Sexual harassment and verbal abuse	Resigned	Disclosed
<i>Marken v. Santa Monica-Malibu USD</i> , 202 Cal.App.4th 1250 (2012)	Teacher	Sexual harassment	Written reprimand	Disclosed
<i>Associated Chino Teachers v. CVUSD</i> , 30 Cal.App.5th 530 (2019)	Teacher	“None of the complaints” similar to <i>Marken</i> & <i>BRV</i>	Letter of warning + letter of concern	Not disclosed



Anderson-Barker v. Superior Court

31 Cal.App.5th 528 (2019)

General Municipal Litigation Update – May 2019

- Private tow companies (official parking garages (OPGs)) perform towing services for LAPD
- OPGs record data, scan portions of CHP forms, and maintain databases
- City owns data, by contract





- Requestor made public records request for
 - > Data recorded in vehicle information database
 - > CHP forms documenting vehicles seized by LAPD
- City declined to produce data





Anderson-Barker v. Superior Court (cont.)

General Municipal Litigation Update – May 2019

- Trial court denied writ petition
- Court of Appeal affirmed
 - > Data with OPGs is not a “public record”
 - > Access to privately held information is not sufficient to establish “possession or control” for purposes of the Public Records Act
 - > But – City might have a duty to disclose data “it actually extracted” from the databases, then used for a governmental purpose



- Agenda item on proposed real estate development near Petitioner's residence
 - > Meeting of Planning & Land Use Management Committee (PLUM committee)
 - Petitioner gave public comment
 - > Next day – special meeting of City Council
 - City denied Petitioner's request to address City Council, because of (previous) opportunity to comment on agenda item at the PLUM committee meeting



Preven v. City of Los Angeles (cont.)

General Municipal Litigation Update – May 2019

- Government Code Section 54954.3 – public comment not required for an agenda item at a regular meeting, if all of the following factors are met:
 - > Agenda item has already been considered by committee composed exclusively of City Council members
 - > Previous opportunity to provide public comment to committee
 - > Agenda item has not substantially changed



Preven v. City of Los Angeles (cont.)

General Municipal Litigation Update – May 2019

- Trial court sustained City's Demurrer
- Court of Appeal reversed
 - > Brown Act does not permit limiting comment at special meeting based on comments at prior, distinct committee meeting
 - > Petitioner adequately pled Brown Act violation





- City Council previously approved solar panel carport and (separately) bus transfer facility





TransparentGov Novato v. City of Novato (cont.)

General Municipal Litigation Update – May 2019

- At a subsequent meeting, following public comment, City Council discussed the following:

Discussion	Time
Declining to place bus project on future agenda	12 minutes
Whether to place solar project on future agenda	11 minutes
Forming “subcommittee” to study solar project	7 minutes



TransparentGov Novato v. City of Novato (cont.)

General Municipal Litigation Update – May 2019

- Cease-and-desist letter
- City responded with two actions
 - > Stated in writing not to establish subcommittees in the future, without placing formation on a City Council agenda
 - > City Council resolution prohibiting Councilmembers from orally asking for future agenda items during a meeting



TransparentGov Novato v. City of Novato (cont.)

General Municipal Litigation Update – May 2019

- Trial court denied petition
- Court of Appeal affirmed
 - > City's commitment not to establish subcommittees without first placing formation on a City Council agenda
 - "Precisely" the type of "unconditional commitment" contemplated by the Brown Act
 - > City Council's non-agenda discussion of solar and bus projects
 - Moot – resolution is unequivocal



Finance

General Municipal Litigation Update – May 2019

- *Wilde v. City of Dunsmuir* (Proposition 218)





- Following public hearing, City Council adopted a resolution raising water rates
 - > 800 protest votes needed for successful protest
 - > 40 protest votes received
- Petitioner gathered 145 signatures for referendum
 - > City refused to place referendum on the ballot
- Petitioner later gathered sufficient signatures for initiative to amend water and sewer rate structure – rejected by voters



Wilde v. City of Dunsmuir (cont.)

General Municipal Litigation Update – May 2019



- Trial court denied writ petition
- Court of Appeal reversed
 - > Voters' rejection of initiative does not moot petition



Wilde v. City of Dunsmuir (cont.)

General Municipal Litigation Update – May 2019

- Proposition 218 did not curtail referendum power
- Resolution is a legislative (not administrative) act
 - > New water rate master plan – favored \$15 million infrastructure upgrade plan
 - > Adjusted allocation of rates to be charged to various water users
- Referendum not barred by essential government service exception



Anti-SLAPP Statute

General Municipal Litigation Update – May 2019

- *Rand Resources, LLC v. City of Carson* (negotiations re: NFL franchise)

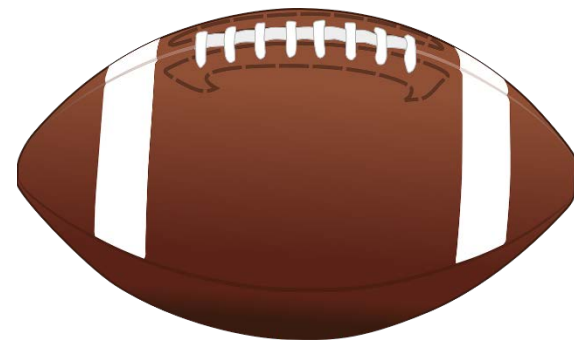


Rand Resources, LLC v. City of Carson

6 Cal.5th 610 (2019)

General Municipal Litigation Update – May 2019

- Rand Resources agreement with City
 - > Exclusive agent to negotiate with NFL
- Rand Resources alleged that, one year later:
 - > City and Bloom began contacting NFL
 - > Mayor told Rand he did not know what Bloom was doing with the City and NFL





Rand Resources, LLC v. City of Carson (cont.)

General Municipal Litigation Update – May 2019

- Trial court granted defendants anti-SLAPP motion
- Court of Appeal reversed
 - > Action did not result from free speech in connection with a public issue
- Supreme Court granted review



Rand Resources, LLC v. City of Carson (cont.)

General Municipal Litigation Update – May 2019

- Supreme Court affirmed, in part, and reversed in part

Allegation	Subject of speech	Anti-SLAPP?
Mayor/City Attorney statements about alleged breach of exclusivity provision	Who should represent City in negotiations with NFL	No
City Attorney's 2012 statement about renewal of exclusivity agreement	2012 statement – renewal not considered until 2014	No
Bloom defendants' disruption of City/Rand Resources business relationship	Bloom defendants spoke with NFL about possible franchise relocation	Yes



Employment

General Municipal Litigation Update – May 2019

- *CAL FIRE Local 2881 v. CalPERS*
(airtime service credit)
- *Marquez v. City of Long Beach*
(minimum wage)



- Option to purchase airtime available for CalPERS members from 2003 through 2012
- 2012 – Legislature passes PEPRA, doing away with option to purchase airtime (among other things)
- Union filed suit
 - > Trial court entered judgment against union
 - > Court of Appeal affirmed



CAL FIRE Local 2881 v. CalPERS (cont.)

General Municipal Litigation Update – May 2019

- Supreme Court affirmed
 - > Option to purchase airtime not a vested right
- Court declined to address “California Rule”
- Pending pension cases in Supreme Court involving:
 - > Alameda / Contra Costa / Merced County (S247095)
 - > Marin County (S237460)
 - > Los Angeles County (S250244)
 - > Superior Court Judges elected in November 2012 (S248513)



Marquez v. City of Long Beach

32 Cal.App.5th 552 (2019)

General Municipal Litigation Update – May 2019

- 2016 – ~200 employees of charter city paid less than state minimum wage of \$10/hour
- Trial court sustained City's Demurrer
- Court of Appeal reversed
 - > Minimum wage for California workers is a matter of statewide concern
 - > Minimum wage law is of broad general application





Land Use / California Environmental Quality Act

General Municipal Litigation Update – May 2019

- *T-Mobile West LLC v. City & County of San Francisco* (wireless facilities)
- *Sierra Club v. County of Fresno* (CEQA)
- *Save Lafayette Trees v. City of Lafayette* (statutes of limitation)



- **Public Utilities Code § 7901**
 - Telephone (and telegraph) companies have authority to construct lines in right-of-way so as not to “incommode” public use of the roads
- **Public Utilities Code § 7901.1**
 - Cities may exercise reasonable control over how roads are accessed, in an equivalent manner



T-Mobile v. San Francisco (cont.)

General Municipal Litigation Update – May 2019

- City adopted ordinance regulating aesthetics of wireless facilities in the public right-of-way
- Plaintiffs filed suit
- Trial court rejected 7901 and 7901.1 challenges
- Court of Appeal affirmed





T-Mobile v. San Francisco (cont.)

General Municipal Litigation Update – May 2019

- Supreme Court affirmed
- Public Utilities Code § 7901
 - > Does not preempt local regulation of telephone lines on aesthetic considerations
 - > Court declined to narrowly interpret “incommode”
- Public Utilities Code § 7901.1
 - > Only applies to carriers’ temporary access of right-of-way, during construction



Sierra Club v. County of Fresno

6 Cal.5th 502 (2018)

General Municipal Litigation Update – May 2019



- Courts should use *de novo* (not substantial evidence) to assess whether EIR has adequately discussed potential environmental impacts
- “General description” of air quality impacts is insufficient

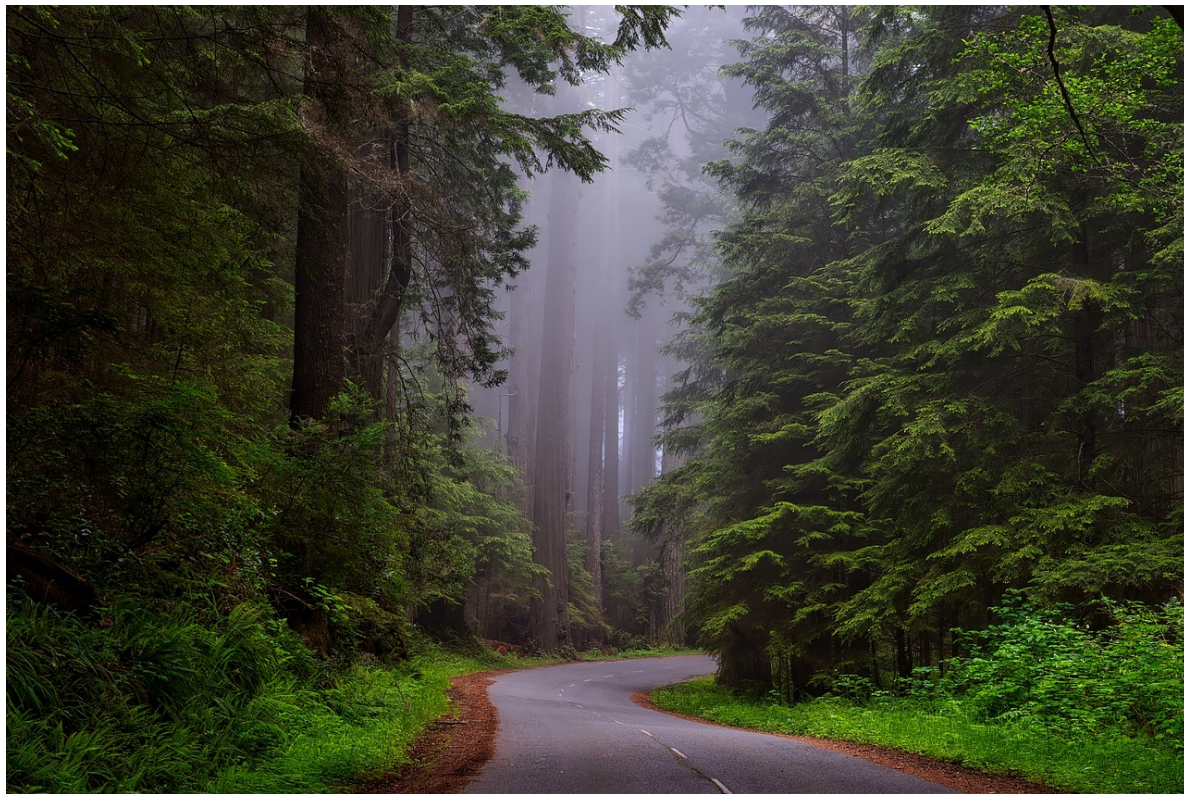


Save Lafayette Trees v. City of Lafayette

32 Cal.App.5th 148 (2019)

General Municipal Litigation Update – May 2019

- Applicability of limitation periods to challenge tree removal under
 - > Planning and zoning law (90 days)
 - > CEQA (180 days)





Civil Rights

General Municipal Litigation Update – May 2019

- *City of Escondido v. Emmons* (qualified immunity)
- *Emmons v. City of Escondido* (qualified immunity)
- *American Freedom Defense Initiative v. King County* (bus advertisement)
- *Davidson v. Randall* (social media)
- *Homeaway.com, Inc. v. City of Santa Monica* (vacation rentals)
- *American Beverage Assn. v. City & County of San Francisco* (sugar-sweetened beverage advertisements)



City of Escondido v. Emmons ____ U.S. ____, 139 S.Ct. 500 (2019) (*per curiam*)

General Municipal Litigation Update – May 2019



- For qualified immunity purposes, “right to be free of excessive force” too general for clearly established right
 - > To deny qualified immunity, case law must be explained “with specificity”



- Officer entitled to qualified immunity
 - > Clearly established law did not prevent officer from stopping and taking down Plaintiff, under the circumstances





American Freedom Defense Initiative v. King County 904 F.3d 1126 (9th Cir. 2018)

General Municipal Litigation Update – May 2019



- County's rejection of proposed bus advertisement that was "very similar" to previously-approved U.S. State Department advertisement
 - > County's transit advertising policy
 - Disparagement standard → viewpoint discrimination
 - Disruption standard → facially valid, but unreasonably applied here



- Randall created “Chair Phyllis J. Randall” Facebook page one day before she was sworn in as Chair of County Board of Supervisors
 - > “Governmental official” page
 - > Randall already Facebook pages for (a) personal use; and (b) campaign





Davison v. Randall (cont.)

General Municipal Litigation Update – May 2019



- Randall posted on Chair's Facebook page about "town hall" meeting that included School Board and Randall
- Davison commented about School Board financial conflicts of interest
- Randall (a) deleted the whole post and all comments, and (b) blocked Davison from commenting on Chair's page
- 12 hours later, Randall unblocked Davison



Davison v. Randall (cont.)

General Municipal Litigation Update – May 2019

- **District Court**
 - > Granted County's MSJ
 - > Denied Randall's MSJ
 - > After bench trial, entered judgment in Davison's favor and against Randall on free speech grounds
- **Ninth Circuit affirmed**





Davison v. Randall (cont.)

General Municipal Litigation Update – May 2019

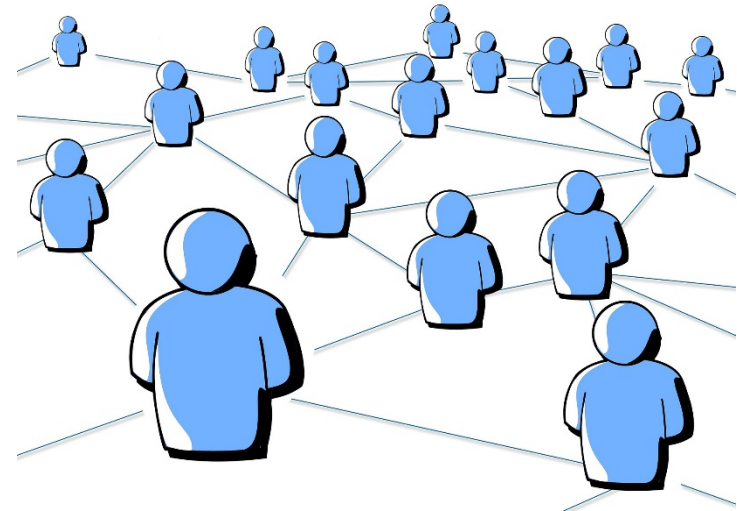
- Davison has standing
 - > Continue posting comments / threat of enforcement
- Randall acted under color of law
- District Court properly ruled in favor of Davison on First Amendment claim
 - > Interactive component of Facebook page → public forum
 - > Randall engaged in viewpoint discrimination
- District Court properly dismissed Board of Supervisors



Davison v. Randall (cont.)

General Municipal Litigation Update – May 2019

- Another social media case to monitor
 - > *Knight Institute v. Trump* (argued in Second Circuit 3/26/2019)
 - > Does President's blocking of users from Twitter account violate the First Amendment?





Homeaway.com, Inc. v. City of Santa Monica

918 F.3d 676 (9th Cir. 2019)

General Municipal Litigation Update – May 2019

- City passed ordinance authorizing licensed home-sharing, with residents remaining on-site
 - > Other forms of short-term rentals banned
- Four obligations on hosting platforms
 - > Collect/remit transient occupancy tax
 - > Disclose listing/booking information regularly
 - > Refrain from listing/booking unlicensed rentals
 - > Refrain from collecting fees from unlicensed rentals



Homeaway.com v. City of Santa Monica (cont.)

General Municipal Litigation Update – May 2019

- Communications Decency Act, 47 U.S.C. § 230
 - > Immunity for internet companies who publish information provided by others
- District Court granted City's Motion to Dismiss
 - > Communications Decency Act
 - > First Amendment





Homeaway.com v. City of Santa Monica (cont.)

General Municipal Litigation Update – May 2019

- Ninth Circuit affirmed, in relevant part
 - > Communications Decency Act does not preempt ordinance

Ordinance <u>does not</u> ...	Ordinance <u>does</u> ..
Require Airbnb & HomeAway to monitor third party public content	Prohibit processing of transactions for unlicensed properties
Require Airbnb & HomeAway to review content provided by hosts	Require monitoring of third party non-public content – requests to complete a booking transaction



Homeaway.com v. City of Santa Monica (cont.)

General Municipal Litigation Update – May 2019

- Ordinance also does not violate the First Amendment for commercial speech purposes
 - > Ordinance is a housing and rental regulation
 - > Booking unlicensed rentals involves non-speech, non-expressive conduct





American Beverage Assn. v. City & County of San Francisco 916 F.3d 749 (9th Cir. 2019) (*en banc*)

General Municipal Litigation Update – May 2019



WARNING: Drinking beverages with added sugar(s) contributes to obesity, diabetes, and tooth decay. This is a message from the City and County of San Francisco.



American Beverage Assn. v. San Francisco (cont.)

General Municipal Litigation Update – May 2019

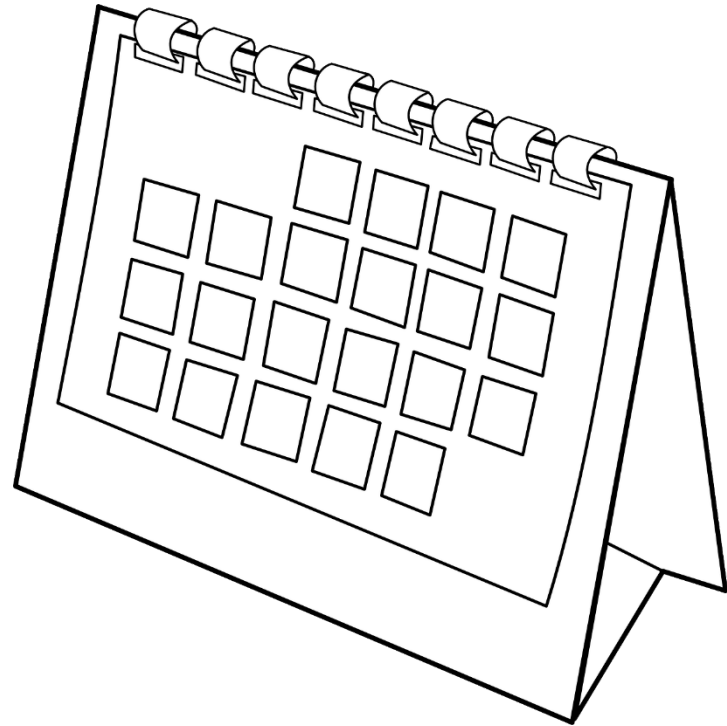
- District Court denied Motion for Preliminary Injunction
- Ninth Circuit reversed
- *En banc* panel also reversed District Court
 - > First Amendment claim subject to heightened scrutiny for government-compelled speech
 - > Plaintiffs have a “colorable” claim



General Themes

General Municipal Litigation Update – May 2019

- Specificity in arguments
- Calendar preference?





Thank you!