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LEGAL ADVOCACY REPORT
April 22, 2013

The League's Legal Advocacy Committee considered the following cases for amicus support from **January 25, 2013 through April 22, 2013.** Copies of amicus filings are available at www.cacities.org/recentfilings. To submit a request for amicus assistance, go to www.cacities.org/requestamicus. For more information about the Legal Advocacy Program, go to the Legal Advocacy Center at http://www.cacities.org/Member-Engagement/Professional-Departments/City-Attorneys or contact the League's Legal Department staff:

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We gratefully acknowledge and thank all of the attorneys identified below who volunteered their time, effort and expertise to assist the League in advocating on behalf of California cities. We also thank their associated public agencies and law firms for the generous support.

ADA

Willits, et al. v. City of Los Angeles
Pending Court: Federal District Court

Case Number: CV10-5782

Citation: 2013 U.S. Dist. LEXIS 34953

The plaintiffs alleged that the city is in violation of the ADA and Section 504 of the federal Rehabilitation Act due to the failure to properly install and maintain accessible "pedestrian rights of way" to individuals with disabilities -- including curb ramps, sidewalks and crosswalks throughout the city. They further alleged that most pedestrian rights of way need remediation, such as installation, repair or obstacle removal. The city asserted that the remediation would cause an undue financial or administrative burden. The district court held the city could not assert the undue burden defense as to "existing facilities" under Section 504 -- including pedestrian rights of way constructed before and not altered since 1977. The city sought support

for an immediate appeal of the issue to the Ninth Circuit, since the ruling may require remediation of every curb ramp and sidewalk in the city regardless of the resulting burden.

Approved Action: File a letter supporting the city's motion to certify the ruling for immediate appeal. **Status of Filing:** The League will file a request for leave to file an amicus brief supporting the interlocutory appeal, together with the proposed brief.

Writers: The League thanks **Timothy T. Coates** with **Greines, Martin, Stein & Richland LLP,** and **Joseph M. Quinn and Alexandra V. Atencio** with **Hanson Bridgett.**

CEQA / SB 375

Cleveland National Forest Foundation; Sierra Club; Center for Biological Diversity; CREED-21; Affordable Housing Coalition of San Diego v. San Diego Association of Governments; People of the State of California, Intervenor
Pending Court: 4th District Court of Appeal, Div. 1

Case Number: D063288

Citation: None

The San Diego Association of Governments (SANDAG) adopted its 2050 Regional Transportation Plan, for the first time including a Sustainable Communities Strategy designed to meet greenhouse gas (GHG) emission reduction targets pursuant to SB 375. Environmental groups and the Attorney General challenged the program EIR certified for the plan. The trial court held the EIR failed to adequately analyze air quality impacts -- in part because it did not rely on GHG reduction goals detailed in State Executive Order S-03-05 as the significance threshold. Further, proposed mitigation measures involving SANDAG's member agencies were insufficient. SANDAG had generally deferred to local jurisdictions' land use discretion to reduce GHG emissions related to future specific projects and to develop local Climate Action Plans. SANDAG has appealed the ruling. This is the first time the Court of Appeal will address the implementation of SB 375 in the context of an EIR.

Approved Action: Join in the amicus brief supporting SANDAG, to be filed with the Court of Appeal by various Metropolitan Planning Organizations. **Status of Filing:** The brief has not yet been filed.

Writer: The League thanks **Whitman F. Manley** with **Remy Moose Manley LLP**.

Concerned Dublin Citizens v. City of Dublin
Pending Court: 1st District Court of Appeal

Case Number: A135790

Citation: None

The city determined that a residential development project to be located within a larger, mixed-use transit center development qualified for exemption from CEQA review under Government Code section 65457. The project was consistent with the broader specific plan for the transit center for which a program EIR had previously been certified. Residents challenged the exemption from environmental review, but the Court of Appeal upheld the city's determination. The court found the project was a purely residential development and consistent with the transit center specific plan. It was therefore subject to the statutory exemption and a supplemental EIR for the specific plan was also not required.

Approved Action: File a letter with the Court of Appeal requesting publication of the opinion.
Status of Filing: The League filed the letter and the court published the opinion.

Writers: The League thanks **James G. Moose and Whitman F. Manley** with **Remy Moose Manley LLP.**

Habitat and Watershed Caretakers v. City of Santa Cruz
Pending Court: California Supreme Court

Case Number: H037545

Citation: 2013 Cal. App. LEXIS 128

The city and the UC Regents settled an action in which the city challenged the EIR for the university's plan to expand the UC Santa Cruz campus outside the city's boundaries. As required under the settlement agreement, the city sought LAFCO approval to amend the city's sphere of influence to allow provision of extraterritorial water and sewer services to the expansion area. An environmental group challenged the related EIR and the Court of Appeal initially concluded it "misdescribed the project's objectives" by failing to describe the project's "underlying purpose" of providing water to the expansion area, thereby triggering the university's obligation to provide more on-campus housing. The EIR therefore failed to analyze "reduced-development" or "limited-water" alternatives. The court then modified the opinion, holding the EIR adequately described the project's objectives but "failed to discuss any feasible alternative, such as a limited-water alternative." The city will seek Supreme Court review.

Approved Action: The League is monitoring the case and will reconsider amicus support if the court grants review.

Civil Rights Actions

Ford v. City of Yakima
Pending Court: Ninth Circuit Court of Appeals

Case Number: 11-35319

Citation: --- F.3d ---, 2012 U.S.App.LEXIS 2716 (9th Cir. Feb. 8, 2012)

A police officer initiated a traffic stop after Ford drove by with loud music and then exited his car at a stop light and yelled at the officer for following him. Once the stop was made, Ford got out and yelled again at the officer, claiming the stop was unlawful and racially motivated. The officer believed the situation was dangerous and ultimately arrested Ford for misdemeanor violation of the city noise ordinance. Ford was found not guilty of the noise violation and filed this action, alleging the officers retaliated against him for exercising his right to freedom of speech. The Ninth Circuit held that Ford alleged facts that established violation of his First Amendment right to be free from police action motivated by retaliation for speech -- even if probable cause otherwise existed for the arrest. There was no qualified immunity for the officers and the action should therefore go to trial.

Approved Action: File a letter with the 9th Circuit, supporting the city's petition for rehearing on the merits. **Status of Filing:** The letter was filed and the matter is pending.

Writer: The League thanks **Peter J. Keith** with the **San Francisco City Attorney's Office**.

Government Claims Act

Centex Homes v. Superior Court (City of San Diego)
Pending Court: 4th District Court Of Appeal, Div. 1

Case Number: D062995

Citation: None

The homeowners' association sued Centex in 2009 for construction defects in Centex's condominium project. The complaint alleged various building code violations, but none related to the building's plumbing or sewer systems. In 2011, the association notified Centex that it would also sue for defective and leaking waste piping used for the project. Centex filed a claim against the city for equitable indemnity for the pipe defect 11 months later, asserting the association's 2011 notice was the first time Centex learned of the defective piping and related investigation had shown that gas from the city's sewer system caused the defect. The city denied the claim and Centex filed this lawsuit, arguing it had presented the claim within one year of its accrual. The Court of Appeal concluded that the claim accrued when the association served Centex in 2012 with a second complaint expressly alleging use of defective piping in the project. Therefore, the statute of limitations had not yet run on Centex's cross-complaint against the city.

Approved Action: File an amicus letter with the Supreme Court supporting the city's intended petition for review of the decision. **Status of Filing:** The letter has not yet been filed.

Writer: The League thanks **Daniel P. Barer** with **Pollak, Vida & Fisher**.

Cordova v. City of Los Angeles
Pending Court: California Supreme Court

Case Number: S208130

Citation: None

A speeding car side-swiped another speeding car, causing the car to climb the curbed center median island and collide into a large tree. The driver, her unborn child and most passengers were killed, and the driver of the other car was convicted of vehicular manslaughter. The family brought a wrongful death action against the city, alleging dangerous condition of the roadway based on its design with the tree located in the center median. The city prevailed in the trial court and the Court of Appeal, arguing the median was safe and the third-party criminal conduct of the surviving driver was the sole cause of the accident. The Supreme Court has granted the plaintiffs' petition for review that followed. The sole issue to be briefed and argued is: "May a government entity be liable where it is alleged that a dangerous condition of public property existed and caused the injury plaintiffs suffered in an accident, but did not cause the third party conduct that led to the accident?"

Approved Action: File an amicus brief with the Supreme Court supporting the city on the merits. **Status of Filing:** The brief has not yet been filed.

Writer: The League thanks **Timothy T. Coates** with **Greines, Martin, Stein & Richland LLP.**

Labor & Employment

Ellins v. City of Sierra Madre
Pending Court: Ninth Circuit Court of Appeals

Case Number: No. 11-55213

Citation: None

The president of the police officers' union led the union's no-confidence vote against the police chief. Several months later, the chief delayed signing a certification that would have entitled the officer to a salary increase, based on her concern that he had been the subject of three internal affairs investigations. The officer then brought this lawsuit against the police chief and the city, alleging the delay in his salary increase was unconstitutional retaliation for the exercise of his First Amendment rights related to his "outspokenness, the vote of no confidence, and [his] union activities." The Ninth Circuit Court of Appeals reversed the trial court, ruling the officer had established an arguable case of First Amendment retaliation so the case could proceed to trial. The city has petitioned for rehearing en banc.

Approved Action: File an amicus brief with the Ninth Circuit, supporting the city's petition for rehearing on the merits. **Status of Filing:** The brief has been filed and the matter is pending.

Writers: The League thanks **Laura J. Kalty, J. Scott Tiedemann and David A. Urban** with **Liebert Cassidy Whitmore.**

Medical Marijuana

City of Monterey v. Carrnshimba
Pending Court: 6th District Court of Appeal

Case Number: H036475

Citation: None

The city refused to issue a business license for the defendant's medical marijuana dispensary and demanded that it cease and desist since dispensary operation was not a permitted enumerated use under the zoning code and was therefore prohibited. The city then enacted a moratorium expressly banning dispensaries. Thereafter the city secured a permanent injunction prohibiting the dispensary's operation, effective for the duration of the moratorium. The defendant appealed, arguing the moratorium could not be applied retroactively. He also challenged the city's position that the pre-moratorium dispensary operation was a public nuisance. The Court of Appeal found the dispensary was an impermissible use under the pre-moratorium code and constituted a public nuisance per se. Further, once the moratorium passed, the defendant had no vested rights in the illegal use and the continued operation of the dispensary remained a public nuisance.

Approved Action: File a letter with the Court of Appeal requesting publication of the opinion.
Status of Filing: The League filed the letter and the court published the opinion.

Writers: The League thanks **Jeffrey V. Dunn and Lee Ann Meyer** with **Best Best & Krieger**.

Park Use

Albert Park Neighborhood Alliance v. City of San Rafael
Pending Court: 1st District Court of Appeal

Case Number: A135028

Citation: None

The city entered into a one-year use agreement with a minor league baseball team, allowing games during a four-month period at an existing baseball stadium in a city park in return for facility improvements and hourly rental fees. The park is subject to grant deed restrictions that require "free use" of the park and limit rentals to one-week periods. A neighborhood association challenged the use agreement, but the Court of Appeal found it complied with the grant deed restrictions. Charging spectators for attending the games did not contravene the free-use

provision. Further, the license granted for intermittent use of the baseball facilities in return for hourly fees did not constitute a continuous lease for more than a week.

Approved Action: File a letter with the Court of Appeal requesting publication of the opinion. **Status of Filing:** The League filed the letter but the court denied the request.

Writer: The League thanks **Benjamin L. Stock** with **Burke, Williams & Sorensen, LLP.**

Proposition 218

Silicon Valley Taxpayers Association v. County of Santa Clara, et al.
Pending Court: 6th District Court of Appeal

Case Number: H038971

Citation: None

The board of supervisors placed a one-eighth cent sales tax measure on the ballot for the general election. The California Constitution provides that an election on a general tax "shall be consolidated with a regularly scheduled general election for members of the governing body of the local government…." SVTA challenged the tax measure as unconstitutional and sought to remove it from the ballot since there were no candidates for county supervisor also included on the ballot. The trial court found the Constitution's language "refers only to the *type* of election for which a tax measure may appear on a ballot," and there is no requirement for governing body candidate(s) to appear on the same ballot. The tax measure passed but SVTA appealed the ruling.

Approved Action: File an amicus brief with the Court of Appeal supporting the county on the merits. **Status of Filing:** The brief was filed but the court declined to accept it and the matter is still pending.

Writers: The League thanks **John D. Nibbelin and Kimberly A. Marlow** with the **San Mateo County Counsel's Office**.

Public Records Act

Community Youth Athletic Center v. City of National City et al
Pending Court: 4th District Court Of Appeal, Div. 1

Case Number: D060001 (related D061141)

Citation: None

The plaintiff challenged National City's 2007 ordinance amending the city's 1995 redevelopment plan to reauthorize the use of eminent domain for nonresidential properties in certain areas for 10 years. As a property owner, the plaintiff claimed the city violated (former)

Community Redevelopment Law requirements and the plaintiff's due process rights in adopting the ordinance, and failed to produce all of the related records requested under the Public Records Act (PRA). The trial court invalidated the ordinance, finding the required maps or other data showing the locations and prevalence of the blighted areas were not attached to the Report to Council (RTC) and there was insufficient evidence of substantial physical and economic blight. The city also violated the plaintiff's procedural due process rights when it released the RTC without the maps and data three business days before the public hearing and denied requests for continuances. Further, the city violated the PRA by failing to disclose all of the public records related to the blight determinations as ultimately requested, including: a) crime data used for a crime chart from the police department for the RTC; and b) field survey data from the city's consultant for the RTC. The PRA requests were not overly vague and the city did not undertake a reasonable search for the records – not specifically asking its staff analyst for the crime data or its consultant for the field survey data. The city has appealed the ruling and later award of attorney's fees and requested amicus support.

Approved Action: The League is monitoring the case.

Regents of the University of California v. Superior Court (Reuters America LLC, Real Party in Interest)

Pending Court: 1st District Court of Appeal

Case Number: A138136

Citation: None

Reuters sought certain investment records under the Public Records Act (PRA) for individual alternative investment vehicles/funds that the UC Regents had invested in through several private equity firms. The university disclosed records showing aggregate amounts invested and related returns from the funds. However, Reuters also sought fund-specific performance data from two of the firms -- records the university does not have since the firms do not make the information available to investors. The trial court found if the university has "constructive possession" of the fund-specific information, it must "make an objectively reasonable effort to obtain" the information from the firms and then disclose it to Reuters. The university appealed and also filed this petition, seeking relief from the trial court order.

Approved Action: File a letter with the Court of Appeal urging reversal of the trial court order or a narrow decision on the merits. **Status of Filing:** The letter has been filed and the matter is pending.

Writers: The League thanks **Caroline L. Fowler, City Attorney for the City of Santa Rosa, and Eric W. Danly** with **Meyers Nave and PRA Committee Chair,** for preparing the letter.

Telecommunications

Pacific Bell Telephone Company v. City of Livermore
Pending Court: 1st District Court of Appeal

Case Number: A136714

Citation: None

The city denied Pacific Bell's encroachment permit application to install fiber optic cable overhead on three existing telephone poles. The project did not comply with the city's undergrounding ordinance and Pacific Bell refused to pay an in lieu fee as the allowed alternative to undergrounding the cable. Pacific Bell challenged the permit denial, claiming Public Utilities Code sections 7901 and 7901.1 preempt the ordinance's enforcement since the cable's installation would not obstruct or "incommode the public use of the road." The trial court found the statutes do not preempt the ordinance or permit application. Charging the in lieu fee was also permissible because the city "made a reasonable determination that permitting the installation…would 'incommode' the public" based on aesthetic impacts. Pacific Bell appealed the ruling.

Approved Action: File an amicus brief with the Court of Appeal supporting the city on the merits and highlighting the importance of maintaining local control of the aesthetic quality of city streetscapes. S**tatus of Filing:** The brief has not yet been filed.

Writers: The League thanks **Michele Beal Bagneris, City Attorney, and Javan N. Rad, Acting Chief Assistant City Attorney,** with the **City of Pasadena**.

Zoning

Summit Media LLC v. City of Los Angeles (CBS Outdoor Inc., et al., Real Parties in Interest or RPIs), Second District, Div. 8, 211 Cal.App.4th 921 (December 10, 2012) (B220198) (S208176)

The RPIs and Summit Media are competing outdoor advertising companies that own off-site signs or billboards in the city. Summit Media sought to set aside a settlement agreement between the city and the RPIs related to litigation over ordinances regulating their off-site signs. Under the agreement, the RPIs were exempted from the city's off-site sign ban, annual fee and inspection program, and numerous other zoning and building laws. They were also permitted to digitize many of their billboards even though the sign ban also prohibits "alterations or enlargements" of existing signs. The trial court found the settlement agreement was illegal and void because it allowed alteration of billboards in violation of the ordinances. The RPIs and Summit Media appealed and the Court of Appeal affirmed, holding that "an agreement to circumvent applicable zoning laws is invalid and unenforceable." The court further directed the

trial court to invalidate all digital conversion permits issued to the RPIs. The RPIs each filed a petition for review and the League was asked to file a letter supporting review.

Approved Action: The League monitored the case and the Supreme Court denied review.