



PASADENA

GENERAL MUNICIPAL LITIGATION UPDATE

League of California Cities
2019 Annual Conference

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Overview

General Municipal Litigation Update – October 2019

8-6-1 in favor of positions favoring public entities

- > Finance 1-1
- > Land Use/CEQA 1-2
- > Torts 3-1
- > Civil Rights 2-2
- > Miscellaneous 1-0-1





- *City and County of San Francisco v. Regents of Univ. of Cal.* (parking tax)
- *Plantier v. Ramona Municipal Water District* (Proposition 218)



City & County of San Francisco v. Regents of Univ. of California 7 Cal.5th 536 (2019)

General Municipal Litigation Update – October 2019

- 25 percent parking tax
- 2011 – State universities refused request to collect and remit parking tax, and City filed suit
 - > Trial court found State universities exempt from parking tax
 - > Court of Appeal affirmed





San Francisco v. UC Regents (cont.)

General Municipal Litigation Update – October 2019

- California Supreme Court reversed
- Parking tax is valid as applied to drivers who park in paid university lots
 - > Tax not nullified by way of “unfavorable secondary economic effects” on State
- City’s interests (in raising revenue through taxes) are “weighty” – and State’s interests are “less compelling”



Plantier v. Ramona Municipal Water District

7 Cal.5th 372 (2019)

General Municipal Litigation Update – October 2019



- Annual sewer charges on Equivalent Dwelling Unit
- Plaintiff's EDU increased from 2.0 to 6.83 – Plaintiff did not protest
- Class action lawsuit filed
 - > Trial court found suit barred for failure to participate in protest hearing
 - > Court of Appeal reversed



Plantier v. Ramona Municipal Water District (cont.)

General Municipal Litigation Update – October 2019

- Supreme Court affirmed – suit not barred by failure to participate in public hearings on sewer rate adjustments
- Party may challenge method to calculate the fee (but not the fee itself) without first having participated in a Proposition 218 protest hearing





Land Use / California Environmental Quality Act

General Municipal Litigation Update – October 2019



- *Knick v. Township of Scott, Pennsylvania* (takings)
- *Union of Medical Marijuana Patients v. City of San Diego* (CEQA)
- *Rosenblatt v. City of Santa Monica* (vacation rentals)



Knick v. Township of Scott, Pennsylvania

139 S.Ct. 2162 (2019)

General Municipal Litigation Update – October 2019

- Ordinance requiring cemeteries to be open to the public during daylight hours
- Township cited Plaintiff for violating ordinance
- Plaintiff filed takings suit in state court
- Township withdrew citation
- State court declined to rule on takings suit





Knick v. Township of Scott, Pennsylvania (cont.)

General Municipal Litigation Update – October 2019



- Plaintiff filed takings suit in federal court
- District Court dismissed, for failure to first pursue inverse condemnation action in state court
- Third Circuit affirmed



Knick v. Township of Scott, Pennsylvania (cont.)

General Municipal Litigation Update – October 2019

- Supreme Court vacated and remanded the case
- Property owner may bring takings claims under Section 1983 in federal court upon the time of taking
 - > Otherwise, Plaintiff is in a “Catch-22”
- Overruled state-litigation requirement for takings claims
 - > “*Williamson County* was poorly reasoned”
 - > “[U]nworkable in practice”



Union of Medical Marijuana Patients, Inc. v. San Diego 7 Cal.5th 1171 (2019)

General Municipal Litigation Update – October 2019

- Zoning amendment to allow medical marijuana dispensaries was a CEQA project
- “Project” is a defined term in Public Resources Code Section 21065
 - Types of discretionary projects listed in Section 21080(a) (including zoning amendments) are not CEQA “projects” as a matter of law





Rosenblatt v. City of Santa Monica

___ F.3d ___, 2019 WL 4867397 (9th Cir. 2019)

General Municipal Litigation Update – October 2019

- Prior litigation by vacation rental hosting platforms – *Homeaway.com, Inc. v. City of Santa Monica*, 918 F.3d 676 (9th Cir. 2019)
 - > Ninth Circuit rejected challenges under
 - Communications Decency Act, 47 U.S.C. § 230 (immunity for internet companies who publish information by others)
 - First Amendment





Rosenblatt v. City of Santa Monica (cont.)

General Municipal Litigation Update – October 2019

- This litigation – Plaintiff rented her house when she and her husband went on vacation
- 2015 – ban on vacation rentals
 - > Exception – residents host visitors for compensation when resident lives on-site throughout the visitors' stay
- Plaintiff filed putative class action lawsuit – facial challenge under dormant Commerce Clause
- District Court granted City's Motion to Dismiss



Rosenblatt v. City of Santa Monica (cont.)

General Municipal Litigation Update – October 2019

- Ninth Circuit affirmed
- Ordinance does not directly regulate interstate commerce by
 - > Prohibiting vacation rentals for Santa Monica homes
 - > Directly regulating booking and payment transactions that may occur entirely out-of-state
 - > Prohibiting advertising of illegal vacation rentals



Rosenblatt v. City of Santa Monica (cont.)

General Municipal Litigation Update – October 2019

- Ordinance does not discriminate against interstate commerce
 - > Applies in the same manner to “persons nationwide”
- Plaintiff failed to sufficiently allege how burden on interstate commerce would “clearly exceed” stated benefits of ordinance





Torts

General Municipal Litigation Update – October 2019

- *Huckey v. City of Temecula* (trivial defect defense)
- *Lee v. Dept. of Parks & Recreation* (trail immunity)
- *Quigley v. Garden Valley Fire Protection District* (preservation of Government Claims Act immunities)
- *City of Oroville v. Superior Court* (sewer backup / inverse condemnation)

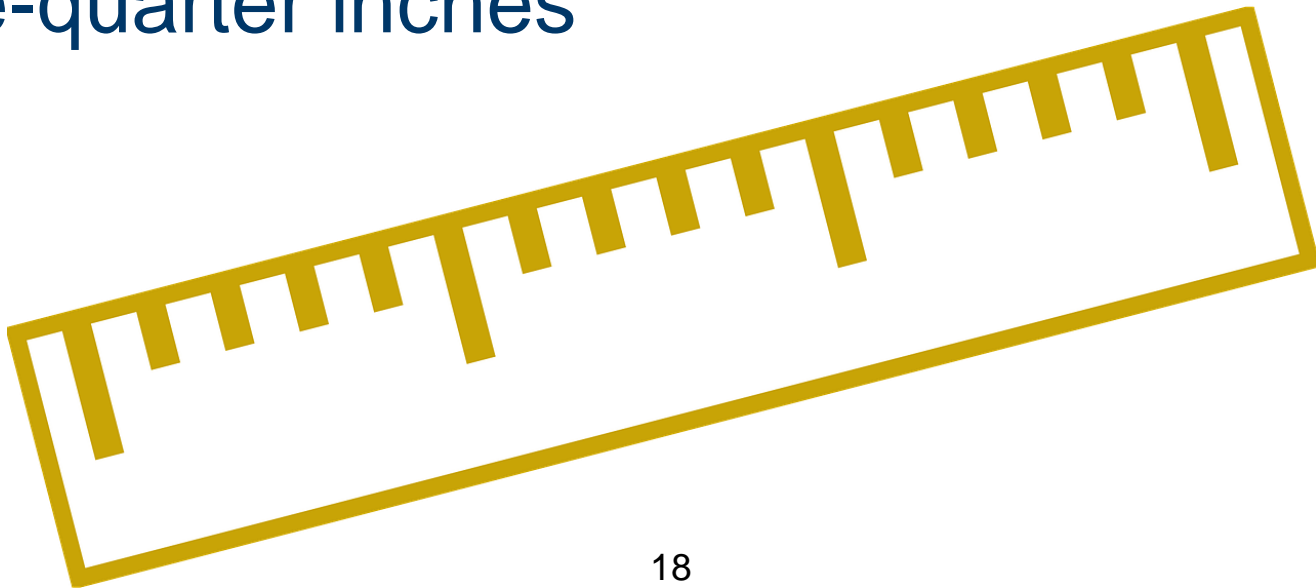


Huckey v. City of Temecula

37 Cal.App.5th 1092 (2019)

General Municipal Litigation Update – October 2019

- Trivial defect defense appropriate where sidewalk rise was as high as nearly one and one-quarter inches





Lee v. Dept. of Parks & Recreation

38 Cal.App.5th 206 (2019)

General Municipal Litigation Update – October 2019

- Trail immunity bars suit relating to condition of condition of stone stairway from parking lot to campground at state park



Quigley v. Garden Valley Fire Protection District

7 Cal.5th 798 (2019)

General Municipal Litigation Update – October 2019

- Plaintiff sued two fire protection districts and three base camp managers for injuries
 - > Defendants asserted 38 affirmative defenses, including “Defendants assert all defenses and rights granted to them by the provisions of Government Code sections 810 through 996.6, inclusive”
 - > Firefighting immunity not specifically asserted
- Trial court granted nonsuit motion on firefighting immunity
- Court of Appeal affirmed granting of nonsuit motion



Quigley v. Garden Valley Fire Protection District (cont.)

General Municipal Litigation Update – October 2019

- Supreme Court reversed
- Firefighting immunity operates as affirmative defense
 - > Not a jurisdictional bar to suit
 - > Can be waived or forfeited
- Case remanded to consider whether immunity sufficiently pled





City of Oroville v. Superior Court of Butte County

7 Cal.5th 1091 (2019)

General Municipal Litigation Update – October 2019



- Dentists' office suffered sewage backup in private sewer lateral
- Property did not have backflow valve
- City required property owners to have backflow valves
- Property owner and insurer sued City for inverse condemnation
- Trial court granted City's legal issues motion (CCP Section 1260.040)



City of Oroville v. Superior Court of Butte County (cont.)

General Municipal Litigation Update – October 2019

- Court of Appeal denied writ petition
- Supreme Court reversed

Property owner must prove that inherent risks of sewer system:

(a) Manifested; and

(b) Were a substantial cause of damage

City acted reasonably in:

(a) Requiring backflow valves; and

(b) Presuming private property owners would comply with the law



Civil Rights

General Municipal Litigation Update – October 2019

- *American Legion v. American Humanist Assn.* (Establishment Clause)
- *Knight First Amendment Institute v. Trump* (social media/First Amendment)
- *Park Management v. In Defense of Animals* (free speech)
- *Edge v. City of Everett* (free speech)



American Legion v. American Humanist Association

139 S.Ct. 2067 (2019)

General Municipal Litigation Update – October 2019

- 1925 – 32-foot-tall Latin cross on pedestal erected, with plaque listing 49 local veterans who died in World War I
- 1961 – Two-county commission acquired cross and land
- 2012 – Plaintiffs filed suit, asserting Establishment Clause violation



The Bladensburg Peace Cross. App. 887.



American Legion v. American Humanist Assn. (cont.)

General Municipal Litigation Update – October 2019

- District Court granted Commission's Motion for Summary Judgment
- Fourth Circuit reversed
- Supreme Court reversed
 - > Cross does not violate Establishment Clause



- Earlier 2019 opinions finding viewpoint discrimination in violation of First Amendment

<i>Davison v. Randall, 912 F.3d 666 (4th Cir. 2019)</i>	<i>Robinson v. Hunt County, Texas, 921 F.3d 440 (5th Cir. 2019)</i>
County supervisor deleted comments and banned resident from Facebook page	County sheriff's office deleted user's comment and banned her from Facebook page



Knight Institute v. Trump (cont.)

General Municipal Litigation Update – October 2019



- President blocked certain Twitter users from his account
- District Court granted users' MSJ
- Second Circuit affirmed
 - > President's use of Twitter account created a public forum
 - > Blocking = viewpoint discrimination
 - > Rejected "workarounds" that could still allow for viewing Tweets



Park Management Corp. v. In Defense of Animals

36 Cal.App.5th 649 (2019)

General Municipal Litigation Update – October 2019

- Amusement park revised free speech policy
- Eight people protested at park entrance, and ninth person handed out leaflets in parking lot
- Local police and district attorney's office declined to intervene without a court order
- Amusement park filed suit





Park Management Corp. v. In Defense of Animals (cont.)

General Municipal Litigation Update – October 2019



- Trial court granted amusement park's MSJ
- Court of Appeal reversed
 - > Unticketed, exterior areas of this amusement park are a public forum
 - > Park may not ban expressive activity in these areas



Edge v. City of Everett, 929 F.3d 657 (9th Cir. 2019)

General Municipal Litigation Update – October 2019

- Enforcing existing lewd conduct ordinance against bikini barista stands
 - > Required extensive use of undercover officers
 - > Was expensive and time consuming
- City passed ordinance
 - > Amending definitions re: lewd acts
 - > Adopting dress code applicable to drive-throughs and coffee stands



Edge v. City of Everett (cont.)

General Municipal Litigation Update – October 2019

- Bikini barista stand owner and five employees filed suit
 - > Due Process and First Amendment claims
- District Court granted Plaintiffs' Motion for Preliminary Injunction
- Ninth Circuit vacated and remanded





Edge v. City of Everett (cont.)

General Municipal Litigation Update – October 2019

- Lewd conduct ordinance
 - > Person of ordinary intelligence can be informed by definition
 - > Does not rely on subjective assessment of officer
- Dress code ordinance
 - > Does not vest police with impermissibly broad discretion
 - > The act of wearing provocative attire, by itself, is insufficient for First Amendment protection



Miscellaneous

General Municipal Litigation Update – October 2019

- *Gates v. Blakemore* (pre-election review of proposed ballot measure)
- *Monster Energy Company v. Schechter* (“approved as to form” language)



Gates v. Blakemore

39 Cal.App.5th 32 (2019)

General Municipal Litigation Update – October 2019

Measure

1 – Fair Pay and Benefits

2 – Charter Accountability

5 – Cap on Total Number of Employees

6 – Ensure an Adequate Number of Sheriff Patrol Officers

7 – Cap the Total Number of County Employees While Ensuring
Sufficient Numbers of Patrol Officers

8 – Ensure Elected Officials are Directly Responsible for
Supervision of the County



Gates v. Blakemore (cont.)

General Municipal Litigation Update – October 2019

- Two consolidated lawsuits involving the County Counsel's declination to prepare ballot titles and summaries for the six measures
- Trial court denied writ petition, and granted County Counsel declaratory relief



Gates v. Blakemore (cont.)

General Municipal Litigation Update – October 2019

- Court of Appeal affirmed
 - Pre-election review proper here due to “serious questions” about measures’ validity
- Proposed measures infringed on, among other things, authority delegated to Boards of Supervisors of charter counties by California Constitution



Monster Energy Company v. Schechter

7 Cal.5th 781 (2019)

General Municipal Litigation Update – October 2019

- Confidential settlement agreement of underlying lawsuit
 - > Confidentiality imposed on Plaintiffs and attorneys
 - > Attorney signed “Approved as to Form and Content”
- Shortly thereafter, attorney quoted in online article
 - > Case settled for “substantial dollars”
 - > “Monster wants the amount to be sealed”
 - > Attorney believes the energy drink to be unsafe
 - > Attorney has three additional lawsuits against Monster
 - > Contact information for “Monster Energy Drink Legal Help”



Monster Energy Company v. Schechter (cont.)

General Municipal Litigation Update – October 2019

- Monster filed suit for breach of settlement agreement
- Trial court denied attorney's anti-SLAPP motion
- Court of Appeal reversed as to breach of contract claim





Monster Energy Company v. Schechter (cont.)

General Municipal Litigation Update – October 2019

- California Supreme Court reversed
- Undisputed that suit arises from protected activity
- Monster met its burden to show that its breach of contract claim had “minimal merit” to defeat anti-SLAPP motion
 - > “Approved as to form and content” means attorney has read agreement, and perceives no impediment to client signing
 - > Courts should examine substance of provisions at issue
 - Attorney was bound by confidentiality provisions



Takeaways

General Municipal Litigation Update – October 2019



Thank you!

