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LITIGATION UPDATE
June 17, 2011

The following report summarizes the cases reviewed by the League's Legal Advocacy Committee ("LAC") from January 22, 2011 through June 17, 2011, and the League's subsequent action. Copies of the amicus filings mentioned in this report are available at www.cacities.org/recentfilings. To submit a request for amicus assistance from the League, visit the League's website at www.cacities.org/requestamicus. For additional information, please contact Patrick Whitnell, General Counsel, at (916) 658-8281 or pwhitnell@cacities.org, or Koreen Kelleher, Deputy General Counsel, at (916) 658-8266 or kkelleher@cacities.org.

The League gratefully acknowledges all of the lawyers identified below who volunteered their time to assist the League in advocating on behalf of cities statewide.

ADA

Frame v. City of Arlington, 2011 WL 242385 (C.A.5 (Tex.)), *en banc rehearing granted* (Jan. 27, 2011) (08-10630)

In this case from the 5th Circuit Court of Appeals, the City of Arlington, TX was sued by a group of disabled persons alleging that the City's sidewalks and certain parking lots were not ADA-compliant. The City argued that the sidewalks and parking lots were infrastructure, and therefore, they were facilities not subject to the ADA. The Appellants argued that sidewalks and parking lots are services, programs or activities under the ADA and, therefore, the ADA mandates modification of non-compliant infrastructure that denies access to a public entity's services, programs and activities.

The Court of Appeals, on rehearing by the 3-judge panel, concluded that sidewalks and parking lots are facilities rather than services, programs and activities of the City. The Court based this conclusion on an analysis of the relevant regulations that supported an interpretation that sidewalks and parking lots are infrastructure, but do not constitute, in themselves, services, programs or activities within the meaning of the ADA.

This conclusion is contrary to the 9th Circuit Court of Appeals' holding in *Barden v. City of Sacramento*, which construed services, programs and activities to mean almost anything a public entity does. In accord, 6th Circuit, 2nd Circuit and 3rd Circuit (see Slip Op. p. 10, n. 10). The Appellants' request for rehearing *en banc* has been granted. The League's Board of Directors voted to monitor this case.

ATTORNEYS' FEES

Center for Biological Diversity v. California Fish and Game Commission**,** 1st Dist. (A127555), *petition for review pending* (filed June 14, 2011) (S192713)

The Center for Biological Diversity challenged by writ of administrative mandate the refusal of the California Fish and Game Commission to designate the pika (a mammal related to rabbits) as a candidate for protection under the California Endangered Species Act ("CESA"). In remanding the matter to Fish and Game for reconsideration (because it might have applied an incorrect standard of review), the trial court awarded public interest attorney fees to the plaintiff under Code of Civil Procedure section 1021.5. The Court of Appeal reversed the award of attorney fees, citing as controlling its recent decision in *Karuk Tribe of Northern California v. California Regional Water Quality Control Board* (2010) 183 Cal.App.4th 330, and finding that the remand to Fish and Game for procedural purposes was not adequate to support the award of attorney fees under Section 1021.5. The League received a request to seek publication of the decision on the basis that the case provides further explanation of *Karuk* and helps to limit the exposure of public agencies to attorney fee awards under Section 1021.5.

The League would like to thank **Whit Manley of Remy, Thomas, Moose & Manley** for drafting the letter requesting publication. The Court of Appeal published the Opinion.

Vargas v. City of Salinas, *pending* 6th Dist. (filed Jan. 29, 2010) (H035207)

Appellant sued the City of Salinas in 2002, alleging the City had unlawfully used public funds and resources to engage in a partisan campaign against a local tax-repeal ballot measure. The City brought a successful anti-SLAPP motion to strike the complaint under Code of Civ. Proc. section 425.16, which the Court of Appeal upheld and the Supreme Court ultimately upheld in a published decision. (See *Vargas v. City of Salinas* (2009) 46 Cal.4th 1.) Following the return of the case to superior court, the City filed a successful motion to recover its attorneys' fees and costs under Section 425.16(c), for the mandatory award of fees to a defendant that prevails in bringing an anti-SLAPP motion (that does not offend the *Noerr-Pennington* doctrine). Appellant (and Intervenor) have appealed the award of fees to the City under Section 425.16(c), as well as the superior court's denial of their own motion for the award of public interest attorneys' fees under Code of Civ. Proc. section 1021.5 (even though Appellant did not prevail on the merits in the underlying case). Due to timing constraints, the League was unable to file a brief in support of the City.

BROWN ACT

Los Rios Community College District v. Superior Court**,** 3rd Dist. (filed Jan. 28, 2011) (C067219)

The Los Rios Community College District Board of Trustees held a closed session in 2007 with the District's real property negotiator regarding the purchase of certain property. In subsequent litigation, the owner of another piece of property sought to discover the events at the closed session and the documents considered by the board through deposition questioning of the

negotiator. The property owner claimed that the real property negotiator closed session privilege only protected discussion about “price” and “terms of payment”, and that any other topics considered at the closed session were not protected. The Court of Appeal issued a writ of mandate compelling the trial court to deny the property owner’s motion to compel the negotiator to answer the deposition questions related to the closed session. The court held that since the closed session had been properly noticed in accord with the Brown Act, the entire closed session was immune from discovery and that in any event the board could properly discuss elements of the transaction that were related to price and terms without violating the Act.

The League would like to thank **Harriet Steiner of Best Best & Krieger** for agreeing to draft the League’s letter in support of publication.

CEQA

Cedar Fair, L.P. v. City of Santa Clara, 194 Cal.App.4th 1150, 6th Dist. (H035619)

Plaintiffs, amusement park owners, challenged the City’s approval of a “term sheet” for a proposed transaction to build a stadium in the City that would become the home field for the San Francisco 49ers. Plaintiffs alleged that under the California Supreme Court’s decision in *Save Tara v. City of West Hollywood*, the term sheet constituted a “project” under CEQA for which an EIR was required. The Court of Appeal disagreed. The court found that in *Save Tara*, the City of West Hollywood conditionally committed itself to take concrete actions toward realizing the development project. In contrast, the term sheet in this case was only a general framework for negotiations, and that the City retained absolute sole discretion to make decisions under CEQA, including deciding not to proceed with the project at all.

The League would like to thank **Whit Manley of Remy, Thomas, Moose & Manley** for drafting the letter requesting publication. The Court of Appeal published the Opinion.

***Citizens for Responsible Equitable Environmental Development v. City of San Diego*,** 2011 WL 1907520, 4th Dist. (D057524)

The Citizens for Responsible Equitable Environmental Development (“CREED”) challenged the City of San Diego’s certification of an addendum to a 1994 final EIR (certified for the relevant precise plan) for a residential development by Pardee Homes in one of the last areas to be developed within the precise plan area. In its petition for writ of mandate, CREED alleged that the City violated CEQA by not issuing a supplemental EIR based on changed circumstances and new information pertaining to the project’s impact on water supply and the effect of greenhouse gas emissions on climate. The Court of Appeal upheld the trial court’s denial of CREED’s petition on several grounds, finding: 1) CREED failed to exhaust its administrative remedies, including by submitting a DVD with thousands of pages of documents and data on the day of the City Council hearing which CREED did not attend; and 2) on the merits, CREED failed to provide evidence that ongoing drought or the effect of greenhouse gas emissions on climate change since 1994 was new information requiring a supplemental EIR for the project.

The League would like to thank **Sabrina Teller and Andrea Leisy of Remy, Thomas, Moose & Manley** for drafting a letter requesting publication. The Court of Appeal published the Opinion.

Wollmer v. City of Berkeley, et al., 193 Cal.App.4th 1329, 1st Dist., Div. 4, (Mar. 11, 2011) (A128121), *petition for review and depublication denied* (June 15, 2011) (S192951)

A developer received City approval for a mixed-use project. The Appellant argued that the approval violated the density bonus law because allowing the developer to receive Section 8 subsidies for the density bonus units would result in the maximum affordable rent established in the Health and Safety Code to be exceeded. The Appellant further argued that the City's approval of amenities should not have been considered when deciding what standards to waive to accommodate the project, and that the City improperly calculated the project's density bonus. The Court of Appeal rejected all three of these arguments.

With respect to CEQA, the City found the project exempt from CEQA under the categorical exemption for infill development projects. The Appellant argued that the granting of the density bonus made the project ineligible for this exemption as the regulation requires that a project comply with all applicable general plan designations and all zoning designations. The Court disagreed and found the project was eligible for this exemption from CEQA. The opinion was unpublished.

The League would like to thank **Tom Brown of Burke, Williams & Sorensen** for drafting the League's letter requesting publication. The Court of Appeal published the Opinion.

EMINENT DOMAIN

Los Angeles County Metropolitan Transportation Authority (MTA) v. Alameda Produce Market, LLC, Unpub., 2010 WL 3898210 (Oct. 6, 2010), *petition for review granted* (Nov. 15, 2010) (S188128)

Metropolitan Transit Agency ("MTA") sought to acquire property for bus parking through eminent domain. MTA used the quick-take procedure, deposited the probable amount of compensation, and filed a motion for immediate possession. Before trial, three lenders with liens against the property filed applications to withdraw a portion of the deposited funds. The property owner received notice of lenders' applications and did not object. The trial court authorized the withdrawals. When MTA sought to take immediate possession, the property owner objected citing various procedural flaws, including failure to satisfy the statutory requirements for the resolution of necessity. MTA argued that by the lenders' withdrawing a portion of the deposit, and by the property owner not objecting, the property owner waived the right to object to the take under Code of Civil Procedure section 1255.260. The trial court dismissed MTA's complaint without considering the statutory waiver argument, and refused to order that the withdrawn deposit be refunded.

In an unpublished opinion, the Court of Appeal reversed, and held that the property owner had waived objection to the take as the property owner had received a financial benefit from the

withdrawals in the form of a parcel no longer encumbered by the various liens. The Court of Appeal also found that the record did not support the property owner's argument that the withdrawals were involuntary. The California Supreme Court granted review.

The League would like to thank **David Skinner and Neli Palma of Meyers, Nave, Riback, Silver & Wilson, and Eugenia Amador,** for drafting the League's brief to the California Supreme Court in support of MTA.

EMPLOYMENT

Alameda County Management Employees Assn. v. Superior Court of Alameda County, 1st Dist. (June 1, 2010) (A128697), Certified for Partial Publication: 2011 WL 1758947

Facing a significant budget deficit, the Alameda County Superior Court ("Court") laid off 72 employees, including a number of managerial employees represented by ACMEA. Several of the ACMEA employees requested to be "bumped" to lower paying classifications (represented by SEIU) in lieu of layoff, under the seniority provisions of the Court's personnel policies. The Court denied the requests, citing the new definition of seniority in the SEIU MOU that was negotiated after the plaintiffs were promoted out of that bargaining unit. The plaintiffs filed a petition for a writ of mandate, alleging the Court violated the Trial Court Employment Protection and Governance Act (Gov. Code § 71600 et seq.) by failing to meet and confer with ACMEA before changing the seniority and bumping rights of its members under the SEIU MOU. The plaintiffs also claimed that the Court violated its personnel policies by not allowing the demotions as well as the employees' due process rights since their requests for pre-layoff hearings were denied. The trial judge denied the petition, concluding that the Act imposed no duty to meet and confer with ACMEA over changes to the SEIU MOU. The court of appeal reversed, finding that the Court had violated the Act and its personnel rules by failing to meet and confer with ACMEA over the changes. The court also found there were no due process violations, since hearings were not required in connection with budget-driven layoffs. The League is monitoring this case.

FIRST AMENDMENT

Norse v. City of Santa Cruz, *pending* U.S. Supreme Court (filed June 6, 2011) (No. 10A1045)

Robert Norse sued the City of Santa Cruz and various officials for violation of his First Amendment rights after he was ejected from a city council meeting and arrested for giving a silent Nazi salute, and then again two years later for whispering during a meeting. Evidence submitted before the trial included videotapes of the meetings. On its own motion, the trial court dismissed the case on the eve of trial, finding the defendants had qualified immunity. The 9th Circuit Court of Appeals affirmed, but on rehearing a three-judge panel affirmed the dismissal of a facial challenge to the city's rules proscribing disruptive conduct but reversed the as-applied challenge. The court concluded that the trial court's procedure resulted in inadequate notice to Norse so was deficient and unfair, and further held: 1) because qualified immunity depends in part on the subjective intent of the public officials, summary judgment cannot be granted in their favor on videotape evidence alone; 2) all of a city council meeting, not just the public comment

portion, is a limited public forum in which the public has First Amendment rights; and 3) the rules of decorum may only authorize ejection of a member of the public for actually disrupting or impeding a meeting. The League is monitoring this case.

FOURTH AMENDMENT

Hayes v. County of San Diego, 9th Cir., (09-55644), *pending request to answer question of state law, California Supreme Court* (filed June 15, 2011) (S193997)

The suspect in a domestic violence call was fatally shot in his home by San Diego County Sheriff deputies when the suspect raised his hands 6-8 feet from the officers, revealing a large knife pointed tip down which lead the officers to believe the suspect was an immediate safety threat as he moved toward them. The minor daughter sued the deputies and the County, alleging 4th and 14th Amendment violations. The District Court granted the defendants' summary judgment on all causes of action. The plaintiff appealed and the Ninth Circuit affirmed the summary judgment of the daughter's 14th amendment claim on the merits -- both under Section 1983 and under the *Monell* municipal-liability case. However, the court reversed and remanded to the District Court: 1) whether the daughter had standing to assert survival claims for any 4th Amendment violations concerning the suspect (including under *Monell*); and 2) her negligent wrongful death claim, noting that negligence liability might arise under California law for an officer's lack of due care related to preshooting tactical decisions and/or conduct in emergency situations, and for the unreasonable use of deadly force based on the facts in the case. The County petitioned for rehearing on the second issue, contending that the Court ignored relevant California case law, or, at least, the Court should have certified the question to the California Supreme court on the issue if it had doubts as to the state of the law in California.

The League would like to thank **Peter Keith of the San Francisco City Attorney's Office** for drafting the League's brief in support of the County of San Diego. The 9th Circuit has withdrawn the Opinion and certified the question to the California Supreme Court.

GOVERNMENT CLAIMS ACT

DiCampli-Mintz v. County of Santa Clara, 6th Dist. (filed April 24, 2009) (H034160)

The plaintiff filed a complaint against Santa Clara County, alleging that she suffered injuries as a result of negligent medical treatment received at a County hospital. The trial court granted the County's motion for summary judgment on the grounds that the plaintiff's delivery of her claim to the risk management department at the hospital did not comply with the Government Claims Act, which requires delivery/mailing/receipt of the claim to the clerk, secretary, auditor or governing body of the local entity (Gov. Code § 915.). The Court of Appeal reversed the trial court decision, finding that delivery of a pre-suit government claim to a department of the target entity that is charged with defending or managing claims against that entity may constitute substantial compliance with the claims presentation requirement, so long as the purposes of the Act are satisfied and no prejudice is suffered by the defendant. In reaching its conclusion, the court declined to follow recent case law that it considered inconsistent with "the long-standing

doctrine of substantial compliance as applied in this context." The League is monitoring this case.

MEDICAL MARIJUANA

Americans for Safe Access, et al. v. City of Los Angeles*, pending* 2d Dist., Div. P (filed Mar. 9, 2011) (B230436)

The City of Los Angeles adopted an ordinance regulating medical marijuana dispensaries. In addition to imposing various regulatory requirements, the ordinance imposes a cap on the number of dispensaries that may register to operate in the city. A condition of registering is that the dispensary must have operated continuously since September 2007, and have registered under the City's prior interim ordinance. The ordinance imposes criminal penalties for violations and also sunsets in two years.

Various dispensaries challenged the ordinance in Superior Court. The Court held that limiting registration to only those dispensaries that had previously registered violated the Equal Protection clauses of the state and federal constitutions. The Court further held that the ordinance was preempted by state law because of the criminal penalty provisions, and the sunset provision. The Court also held that the ordinance's requirement to maintain general contact information for members violated the members' right of privacy.

The League would like to thank **Tom Brown of Burke, Williams & Sorensen, and Jeff Dunn and Brant Dveirin of Best Best & Krieger,** for agreeing to draft the League's brief in support of the City.

Pack et al. v. Superior Court of Los Angeles County (City of Long Beach, Real Party in Interest)**,** 2d Dist. (B228781)

The League and various organizations received a request from the Court of Appeal for amicus briefs to be filed in connection with this case, concerning the legality of the medical marijuana collective ordinance adopted by the City of Long Beach. The court is seeking amicus briefs on the impact of federal law on the Long Beach ordinance, including whether 1) the Long Beach ordinance is preempted by federal law prohibiting the manufacture, distribution or possession of marijuana, including particular sections of the ordinance requiring the testing of representative samples of the marijuana distributed by the collective, the nonrefundable permit fee requirement, and the City's policy that issues the permits on a lottery basis; and 2) whether the Long Beach ordinance violates the medical marijuana collective members' privilege against self-incrimination, including particular sections of the ordinance related to cultivation records and the required identification of collective members who participate in marijuana cultivation.

The League would like to thank **Arthur Wylene with the Tehama County Counsel's Office** for agreeing to draft the League's brief in support of the City of Long Beach.

MOBILEHOME PARK CONVERSION

Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles, 187 Cal.App.4th 1461 (2010), *petition for review granted* (Dec. 1, 2010) (S187243)

Pacific Palisades Bowl Mobile Estates, the owner of a 172-unit mobilehome park in the coastal zone, filed a petition for writ of mandate and declaratory relief, seeking to require the City of Los Angeles to process and grant Palisades Bowl's subdivision application for the conversion of the park to resident ownership. Palisades Bowl claimed the City violated the Permit Streamlining Act and could not require the application to comply with requirements under the Mello Act (to preserve low and moderate-income housing units in the coastal zone) and the Coastal Act (to obtain coastal development permits). Although the City prevailed in the trial court on the Permit Streamlining Act issue, the court found that the mobilehome park conversion statute (Gov. Code section 66427.5) superseded the City's Mello Act procedures and preempted the City's coastal development permit requirements under the Coastal Act. The City appealed and the Court of Appeal reversed the trial court in a unanimous published decision. The Court held that the Mello Act and the Coastal Act could be harmonized and applied together with Section 66427.5, such that the City could also impose the conditions and requirements mandated by the other state statutes on the conversion.

As now stated on the Supreme Court's website, the issues presented with Palisades Bowl's appeal are: 1) Do the Mello Act and the Coastal Act apply to the conversion of a mobilehome park to resident ownership if the park is located in the coastal zone? 2) Do the limits imposed by Gov. Code section 66427.5 on the scope of a subdivision hearing prohibit the City from requiring compliance with the Mello Act and the Coastal Act when the park is located in the coastal zone?

The League would like to thank **Rochelle Browne of Richards Watson Gershon** for agreeing to draft the League's brief in support of the City.

NEGLIGENCE

C.A. v. William S. Hart Union High School District, *pending* Supreme Court (filed Dec. 16, 2010) (S188982)

The minor plaintiff sued the William Hart Union High School District in Santa Clarita for negligence, negligent supervision, hiring or retention of its employees, negligent failure to warn, train or educate, and related claims. The plaintiff alleged that his female high school guidance counselor sexually harassed, abused and molested him on a number of occasions during a nine month period in 2007. He also alleged that the District knew of the counselor's propensity to molest underage students. The trial court sustained the District's demurrer and the Court of Appeal affirmed, finding that: 1) as a public entity, the District was not vicariously liable for the counselor's actions that were clearly outside the scope of her employment; and 2) the District's public entity immunity precluded direct liability for the District's alleged negligence, including for any negligent hiring or supervision of the counselor. However, the decision's extensive dissent notes that the District may be directly liable for breaching its duty to protect students from physical harm in this case, and also may be vicariously liable for the negligence of its

employees who were responsible for hiring and supervising the counselor – given that the District employees who hired and/or supervised the counselor knew of the counselor's propensity for sexual misconduct.

The League and the California State Association of Counties will file a joint amicus brief in support of the District.

POLICE POWER

Disney v. City of Concord, 1st Dist. (filed April 5, 2011) (A129094)

The pro per Plaintiff brought constitutional challenges to the City's ordinance regulating the parking of recreational vehicles on private property. The Court of Appeal, citing well-established law, concluded that the ordinance was a proper regulation under the City's police power authority to regulate out of concern for community aesthetics. Further, the Court concluded that it was not within its province to weigh the wisdom of the ordinance. Although initially unpublished, the opinion is now published. The League voted not to participate in this case.

PROPOSITION 218

Great Oaks Water Co. v. Santa Clara Valley Water District, *pending* 6th Dist. (filed Feb. 10, 2010) (H035260)

The District Act authorizes the Santa Clara Valley Water District to impose groundwater charges on those who extract water from groundwater basins within the District. In 2005, the District informed groundwater producers of proposed new rates and the basis for those rates. The District then held several public hearings, adjusted the proposed rates, and implemented the final rates for the 2005-2006 fiscal year. Great Oaks Water Company (a water retailer) sued the District, claiming that the new charges violated Proposition 218 and the Act. The trial court agreed, concluding that the District: 1) failed to secure proper voter approval required under Proposition 218 for imposing the groundwater charges (via notice and ballot affirmation); and 2) violated the Act by failing to base the new charges on the cost of service and improperly commingling groundwater revenue with other monies. The trial court awarded Great Oaks a full refund of its 2005-2006 groundwater charges, in the amount of $4.6 million plus over $1 million in interest, in connection with the Proposition 218 analysis. Alternatively, damages in the amount of $1.3 million were awarded based on the District's violation of the District Act. The League is monitoring this case.

PUBLIC RECORDS ACT

Cummins v. City of Encinitas, San Diego Superior Court (37-2010-00058511-CU-PT-NC)

The Superior Court granted the petitioner's writ of mandate to compel the City of Encinitas under the Public Records Act to disclose the working/preliminary draft of the "final draft" street condition and maintenance report produced collaboratively by staff and the City's streets consultant. The City had refused to disclose the preliminary draft and any written

communications between staff and the consultant, citing the "deliberative or decision-making process" privilege under the "catch-all exemption" of Section 6255 of the Act (as stated in *Times Mirror Co. v. Superior Court* (1991) 53 Cal 3d 1325). The court disagreed with the City's position, noting that the deliberative process privilege cases denying requests for disclosure were more distinguishable than the cases compelling disclosure. The court then found that the public interest in disclosure of the draft report related to street maintenance recommendations and management of public funds outweighed nondisclosure. The court refused to agree with the City that release of the preliminary draft would establish a precedent for future disclosures or result in discouraging candid staff discussions, expending limited staff resources, or negative public reaction or confusion that would affect the City Council's decision-making on the report (since in this case the process was already complete).

The League would like to thank **Shawn Hagerty of Best Best & Krieger** for agreeing to draft the League's brief in support of the City.

Long Beach Police Officers Assn. v. City of Long Beach, *pending* 2nd Dist. (filed Feb. 22, 2011) (B231245)

Following an incident where City of Long Beach police officers shot and killed a citizen holding a garden hose nozzle mistaken for a weapon, the Los Angeles Times (real party in interest) made a Public Records Act request for the City to release the names of all police officers who had been involved in shootings from 2005 through mid-December 2010. The City Police Officers Association filed a request for a TRO and injunctive relief to prevent the City from releasing the names. Although initially named as a defendant, the City joined in the request with the POA based on general officer safety concerns and the position that such records are confidential as part of an officer's personnel file in connection with a shooting investigation.

The TRO was ultimately dissolved and the preliminary injunction denied, as the trial court found that: 1) the Act's exemptions from disclosure for personnel files and police incident reports do not apply to the City's release of the officer names, which would not constitute an unwarranted invasion of officer privacy; and 2) the public interest in disclosure of the names outweighs general officer safety and privacy concerns. The court noted the 2008 Attorney General opinion that reached a similar conclusion (citing the decision in *New York Times v. Superior Court*, 52 Cal. App.4th (1997)). The trial court order is stayed pending this appeal (petition for writ of mandate in the Court of Appeal was denied). The League is monitoring this case.

San Bernardino County Flood Control District et al. v. San Bernardino Associated Governments et al.*,* 4th Dist., Div. 1, (D058950), *petition for review pending* (S191420)

This case arises out of a settlement agreement of a takings claim entered into by the County and a flood control district on one side and a property owner on the other, which resulted in a large payment to the property owner. Allegedly, this agreement was reached through a series of mediations. The Attorney General and District Attorney have issued a felony complaint alleging the settlement agreement is the product of an elaborate scheme of bribery and extortion among the persons negotiating the settlement. The county is seeking indemnification from the San Bernardino Associated Governments ("SANBAG") and the San Bernardino County

Transportation Authority ("TA"), which had some involvement in the project for which the property that was the subject of the takings claim was needed (but were not otherwise parties to the agreement). In discovery, SANBAG and the TA, sought, through discovery, documents related to the mediations that resulted in a settlement agreement. SANBAG and TA seek to argue that the agreement was void *ab initio* as being made in violation of Government Code section 1090, and therefore, the County was under no obligation to pay the settlement. SANBAG and TA argue that where there is the allegation of fraud, the mediation confidentiality provision works to deprive them of their due process rights. They also argue that these mediation documents are public records under Proposition 59, and not subject to the privilege exception in the Public Records Act.

The trial court denied SANBAG's and TA's discovery request, and the Court of Appeal denied their writ petition. They are seeking review with Supreme Court. The League is monitoring this case.

SECOND AMENDMENT

Peruta v. County of San Diego, *pending* 9th Circuit Court of Appeals (filed Dec. 16, 2010) (No. 10-56971)

Several residents of San Diego County and the California Rifle and Pistol Association Foundation sued the County under 42 U.S. Code section 1983, seeking injunctive and declaratory relief from the County's policies implementing the concealed weapons statutes (Pen. Code sections 12050-12054) concerning the requirements for obtaining a license to carry a concealed weapon (or "CCW" permit). The residents in particular challenged the County's denial of the CCW permits for lack of "good cause" (as required under Pen. Code section 12050), which the County defined as circumstances that distinguish the applicant from other members of the general public and causes him or her to be placed in harm's way. The trial court granted the County's motion for summary judgment, finding the County's CCW permit policy was reasonably related to its "substantial interest in public safety and in reducing the rate of gun use in crime." The court disagreed with the plaintiffs' challenge to the good cause requirement, including their argument that the common law right to possess handguns in the home for self-defense (see *District of Columbia v. Heller* (2008) 554 U.S. 570) extends to the right to carry a loaded handgun in public, whether openly or concealed. The court also found that the County's CCW policy did not violate the plaintiffs' equal protection or due process rights, or the right to travel.

The League and the California State Association of Counties will file a joint amicus brief in support of the County.

SIGNS

Summit Media, Inc. v. City of Los Angeles, *pending* 2d Dist. (filed Nov. 10, 2009) (B220198)

Summit Media ("Summit") seeks to set aside a settlement agreement between the City and Real Parties in Interest ("RPIs") Clear Channel Outdoor, Inc. and CBS Outdoor, Inc.—two companies

that own and maintain numerous "off-site signs." The settlement agreement exempts RPIs from the City's Sign Ban Ordinance, the City's Off-Site Inspection Program (a program by which off-site signs are charged a fee and subject to an annual inspection by the City), and various other zoning and building laws regulating off-site signs in the City.

Summit challenged the agreement as an illegal *ultra vires* act. The trial court agreed, stating: "Municipalities may not waive or consent to a violation of their zoning laws, which are enacted for the benefit of the public. Any such agreement to circumvent applicable zoning laws is invalid and unenforceable."

The League would like to thank **Randal Morrison of Sabine & Morrison** for agreeing to draft the League's brief in support of the City.

STATUTE OF LIMITATIONS

General Development Co. v. City of Santa Maria, *pending* 2nd Dist. (filed October 29, 2010) (B228631)

General Development Company ("GDC") appealed the dismissal of its petition for a writ of mandate following the City of Santa Maria's denial, on February 16, 2010, of GDC's request for a general plan amendment and zone change. GDC holds a ground lease of the subject property and the owner of the property had opposed the requested changes. GDC filed the writ petition on May 14, 2010, but the City did not receive its mailed copy until May 20, 2010. The City demurred on the grounds that GDC failed to serve the City within the 90-day statute of limitations required under Gov. Code section 65009(c), and also failed to name the property owner as an indispensable party. The trial court agreed with the City that Section 65009(c) applies, and sustained the demurrer on the sole grounds that the 90-day statute of limitations had run before GDC served the City.

The City is asking for amicus support on the issue of Section 65009(c)'s clear application to a legislative body's denial of a general plan amendment and/or zone change. The City's concern is that GDC has raised the issue that the language in Section 65009(c) does not expressly include application of the 90-day statute to a legislative body's denial of a request for a general plan amendment or zone change, and the facts in the cases interpreting the provision all apply the 90-day limitation to approvals of land use applications rather than denials.

The League would like to thank **Iris Yang of Best Best & Krieger** for agreeing to draft the League's brief in support of the City.

TORT LIABILITY

Simone v. City and County of San Francisco, 2011 WL 804647 (1st Dist., Div. 3) (March 8, 2011) (A126531), *petition for review and publication denied* (June 8, 2011) (S192072)

Plaintiff was walking across an intersection when she was struck by a car and injured. Plaintiff sued the City arguing the cross walk was a dangerous condition of public property because of

topographic factors that limited the visibility of persons using the cross walk by drivers in vehicles approaching the intersection, and because of sudden blinding sunlight as the vehicle crested the hill prior to entering the intersection. The Court of Appeal concluded, in an unpublished opinion, that no dangerous condition of property existed.

The League would like to thank **Jennifer Henning of the California State Association of Counties** for drafting the letter supporting publication. The Court denied review and publication of the opinion.

UNFAIR LABOR PRACTICES

County of Riverside v. California Public Employment Relations Board, SEIU Local 721, *pending* 4th Dist., Div. 2 (filed July 23, 2010) (E051351)

Union seeks to organize certain groups of County temporary employees. Union files complaint with PERB alleging a violation of the Meyers Milias Brown Act relating to statements by a majority of the County supervisors at a public hearing that the County should explore ending its temporary employee program, and consider contracting for temporary employees through private employment agencies. The County argued that the supervisors' comments were privileged speech related to a legislative purpose. PERB disagreed and found that the supervisor's statements were unlawful threats intended to coerce employees into ceasing their organizing activities for fear of losing their jobs. The County has filed a writ seeking relief from the PERB decision. The League is monitoring this case.

WAGES

Azusa Land Partners v. Department of Industrial Relations, 2010 WL 5158551, 2d Dist. (B218275)**,** *petition for review and depublication denied* (Mar. 2, 2011) (S190216)

The City enters into a development agreement and issues various approvals for a mixed residential/commercial development. The City forms a community facilities district covering the development area, which issues bonds to fund a portion of the public improvements within the district. The remaining portion of the public improvements is funded with private money by the developer. The Department of Industrial Relations determines that all public improvements within the district, whether funded from bond proceeds or from private money, are subject to prevailing wage requirements. The trial court and Court of Appeal affirm. The Court of Appeal concluded that the Prevailing Wage Law (Labor Code sec. 1720(c)(2)) contains no requirement that public funds be directly allocated to specific public improvements, nor does it require a dollar-for-dollar reimbursement for infrastructure improvements. In the Court's view, any other interpretation would allow developers to minimize their prevailing wage obligations by allowing them to allocate lump sum public contributions to specific public improvements. The City argued that Mello-Roos bonds are often intentionally issued in an amount less than is necessary to fund all the necessary public improvements in order to reduce the eventual tax burden on the encumbered properties within the district, and that the Court's opinion will discourage the use of community facilities districts as a funding mechanism, thus making development more costly. The League is monitoring this case.

Sheppard v. North Orange County Regional Occupational Program, 2010 WL 5188768 (Dec. 23, 2010), *petition for review denied* (April 13, 2011) (S190297)

Sheppard contends that he is entitled to overtime pay for work performed as a part-time instructor for the North Orange County Regional Occupation Program ("NOCROP") under the Labor Code and Wage Order no. 4-2001. Upon appeal from a trial court decision in favor of NOCROP, the Court of Appeal reversed and held that the Wage Order did apply to employees of school districts, and that the Legislature had plenary authority over school districts. The Court concluded that NOCROP was an agency formed by multiple school districts, and that Sheppard was an employee. Therefore, given that the Wage Order was legislatively authorized, it applied to NOCROP employees, including Sheppard.

NOCROP attempted to argue that the Wage Order, if applied to public employees, would violate cities' and counties' plenary authority over compensation, citing in part *County of Riverside v. Superior Court*. The Court held that this argument was inapplicable given that Sheppard was not employed by a city or county, but rather was employed by a public agency over which the Legislature had plenary authority. The League monitored this case.

REQUESTS FOR VIEWS FROM THE ATTORNEY GENERAL

Opinion No. 11-401 – A request from Senator Ted Gaines for an opinion of the Attorney General on the following questions: 1) Does the requirement in subdivision (b) of Government Code section 36502 that a proposed municipal term limits ordinance "shall apply prospectively only" mean that prior time in office served by a city council member, whether full or partial terms, may not count against any limitation on time in office proposed by a new municipal term limits ordinance? and 2) If a municipal term limits ordinance adopted on November 2, 2010 included a provision that a council member who has served two terms prior to August 1, 2010 must sit out eight years before serving on the council again, would council members who were elected on November 2, 2010 be lawfully entitled under existing state law to serve two additional terms before being subject to the waiting period provision? The League took no action on this request.

Opinion No. 11-402 – A request from Kathleen J. Tuttle for an opinion of the Attorney General on the following question: Does it constitute an unlawful practice of law for one person (who is not a licensed member of the California Bar) to represent another person by presenting a demand letter and/or by negotiating a settlement of legal claims before a civil complaint is formally filed? The League took no action on this request.

Opinion No. 11-405 (responses due July 18, 2011) – A request from Assembly Member Das Williams for an opinion of the Attorney General on the following question: May a general law city enter into a contract with a private company to procure private fire and emergency services in place of the fire and emergency services already provided by the city? (Govt. Code secs. 38611, 55631, 55632.) The League took no action on this request.