

# General Municipal Litigation Update

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# Agenda

- Municipal Finance
- Government Claims Act
- Elections
- Open Government
- Miscellaneous

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# Municipal Finance

- ***Padilla v. City of San Jose, et al.***
  - Plaintiff must pay under protest to later sue for a refund of garbage collection charges (Health & Safety § 5472).
  - § 5472 applies to all sanitation and sewage fees, including garbage collection charges.
  - § 5472 applies to a fee enacted by ordinance or resolution adopted by 2/3 vote of the legislative body.
  - A Government Claims Act claim is not a substitute.

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# Municipal Finance

- ***City of San Buenaventura v. United Water Conservation District***
  - A statute requiring local agencies charge M&I users 3 to 4 times more than ag users for groundwater replenishment violates Prop. 26.
  - Groundwater pumping charges must meet Prop. 26 cost of service requirements.
  - Efforts to protect ag interests from high water costs still requires justification based on benefits from or burdens on the system.



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# Municipal Finance

- ***Broad Beach GHAD v. 31506 Victoria Point LLC***
  - A special assessment formed to protect oceanfront homes from erosion must exclude the general benefits to the public from a wider beach.
  - GHAD's intent for the project doesn't matter when determining general benefits.
  - Regulatory requirements for beach access don't matter when determining general benefits.
  - Because Plaintiffs had private financial interests and means, they don't get PAGA attorney fees.



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# Municipal Finance

## • *Zolly v. City of Oakland*

- Oakland could not establish that a franchise fee on waste haulers was not a tax under Prop. 26.
- The extent to which haulers benefitted from the right to use City streets differently than others was a question of fact improper for demurrer.
- A fee is “imposed” under Prop. 26 so long as it is established by legal authority; it matters not that the haulers agreed to pay them in franchise agreements.
- Economic incidence is sufficient to confer standing to challenge a fee under Prop. 26.

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# Gov't Claims Act

## • *Simms v. Bear Valley Community Healthcare District*

- Litigation threat letters should be treated as “trigger claims” under the GCA. If it provides enough for the agency to investigate and respond, the GCA is triggered.
- Claimants may simultaneously seek relief for a late claim, and assert actual and timely claim presentation.
- If in doubt, treat it as a claim.

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# Elections

- ***County of San Bernardino v. Superior Court***

- A county and its ROV have no duty under the Elections Code or Prop. 218 to report the requisite number of signatures to an initiative proponent — even upon request.
- County actors are immune under GC § 818.8 and § 822.2 for reporting an inaccurate number of signatures, absent fraud, corruption or malice.
- Initiative proponent had to bear the cost to obtain unnecessary signatures.



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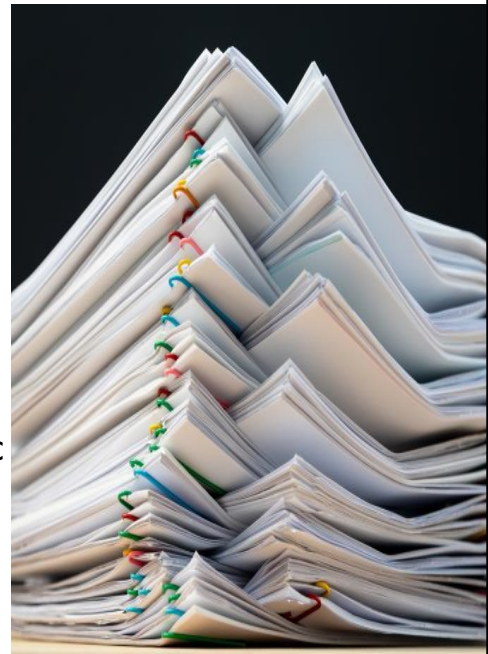
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# Open Government

- ***Community Action Agency of Butte County v. Superior Court***

- A non-profit is an “other local public agency” subject to the PRA only in exceptional circumstances.
- Test: is the non-profit operating as a local public entity (governmental function, funding, day-to-day control, creation of non-profit).
- The PRA should be read narrowly to avoid bringing private non-profits within its reach.



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# Open Government



## *Essick v. County of Sonoma*

- The Sonoma County Sheriff is not entitled to an injunction barring release of an independent investigator's report regarding allegations of his harassment.
- The Sheriff is not the BOS's "employee", and thus the PRA's exemption for personnel records doesn't apply.
- The Sheriff was not entitled to confidentiality of the report under POBRA.

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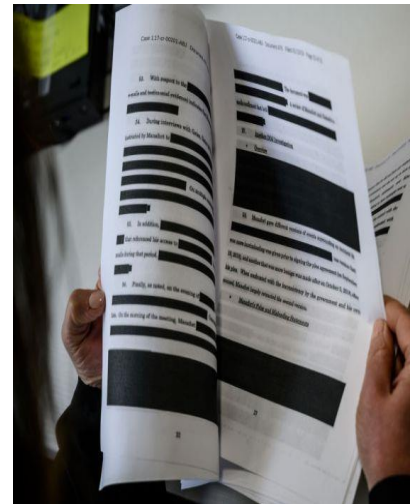
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# Open Government

## • *Kinney v. Superior Court of Kern County*

- The County is not obligated to disclose names of DUI arrestees from over 11 months before the PRA request.
- Only "contemporaneous" arrestee information must be disclosed under GC § 6254(f)(1).
- The Court requested a legislative fix to define what is "contemporaneous" police activity — to set a specific timeframe.



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# Miscellaneous

## • ***Where Do We Go Berkeley v. Cal. Dep't of Transportation***

- Caltrans was not enjoined from clearing a homeless encampment in a dangerous location.
- Requiring a 6-month notice to allow for alternative housing was in violation of the ADA: Caltrans is not in the business of providing housing solutions.
- The trial court improperly minimized the serious hardship on Caltrans, going beyond maintaining the status quo.



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# Miscellaneous

## • ***Sanchez v. Los Angeles Department of Transportation***

- City of LA's regulation of e-scooters does not violate the 4<sup>th</sup> Amendment.
- Receipt of real-time location data that riders voluntarily give scooter providers is not an unlawful search.
- There is a diminished expectation of privacy, unlike cellphone data. But watch for a case on different facts!



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# Questions?

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