

SUMMARY OF SIGNIFICANT LOCAL GOVERNMENT REVENUE, LAND USE, AND GOVERNMENT LAW MATTERS

BENJAMIN P. FAY

The following is a list of matters concerning local government revenues, land use, and government law in which Ben Fay played a lead or otherwise primary role.

Local Government Revenues

AB Cellular v. City of Los Angeles
Second District Court of Appeal

Drafted an amicus brief on behalf of the League of California Cities regarding the interaction of Proposition 218, the federal Mobile Telecommunications Sourcing Act, and the City of Los Angeles's utility user tax as applied to mobile telephones.

Airport Parking Services ("Skypark") v. City of San Bruno
San Mateo County Superior Court
First District Court of Appeal

Successfully defended in trial and on appeal the City of San Bruno's business license tax on airport parking. The case addressed claims under equal protection, interstate commerce, privileges and immunities, the right to travel, and California elections procedures.

City of Alhambra v. County of Los Angeles
Second District Court of Appeal
California Supreme Court

Prepared an amicus brief on behalf of the League of California Cities regarding the interaction of the Property Tax Administration Fee, the Triple Flip, and the Vehicle License Fee backfill. Currently on review by the California Supreme Court.

Andal v. City of Stockton
San Joaquin County Superior Court
Third District Court of Appeal

Represented the City of Stockton in a challenge under Propositions 62 and 218 to the City's fee imposed on all phone lines in the City to pay for 911 services. A settlement was negotiated following the briefing of the appeal.

City of Clovis v. County of Fresno
Second District Court of Appeal

Preparing an amicus brief on behalf of the League of California Cities regarding interaction of the Property Tax Administration Fee, the Triple Flip, and the Vehicle License Fee backfill.

Copperopolis Fire Protection District

Advised the Copperopolis Fire Protection District on compliance with Gann appropriations limits.

City of Dinuba v. County of Tulare
California Supreme Court

Prepared an amicus brief on behalf of the League of California Cities addressing a county's claim that government immunity protects it from having to reallocate misallocated property taxes.

City of East Palo Alto v. Romic
Out-of-court dispute

Advised the City of East Palo Alto on the application of a business license tax on hazardous waste facilities. The dispute was resolved with a settlement following an administrative process.

Howard Jarvis Taxpayers Association v. City of Stockton
San Joaquin County Superior Court

Defended the City against challenges under Proposition 218 regarding the City's water, sewer, and storm water fees. Negotiated a successful settlement to the case.

City of Irvine v. County of Orange
Out-of-court dispute

Advised the City of Irvine in a dispute with the County of Orange regarding the allocation of property taxes generated within the City. The primary issue was the interaction of Tax Equity

Allocation and tax increment received by the City's redevelopment agency. The County was convinced to reverse its decision to reduce the City's annual property tax allocation by \$8 million.

KB Homes v. City of Tracy
San Joaquin County Superior Court

Successfully defended the City of Tracy in a lawsuit brought by a residential developer challenging a fee for water connections. The trial court issued a judgment upholding the fee.

Kimberly v. City of Petaluma
Sonoma County Superior Court

Defended the City of Petaluma in a class-action challenge to the City's vehicle towing fees.

McKenzie v. City of East Palo Alto
San Mateo County Superior Court
First District Court of Appeal

Successfully defended in the trial court and on appeal a challenge to the ballot materials for a proposed business license tax on hazardous waste facilities in the City of East Palo Alto.

Nicholls v. Shasta Lake Fire Protection District
Shasta County Superior Court

Successfully defended the Shasta Lake Fire Protection District in a challenge to an assessment district under Proposition 218.

Town of Portola Valley, Town of Woodside, Town of Colma, and City of Half Moon Bay v. County of San Mateo
Out-of-court dispute

Represented the towns of Portola Valley, Woodside, and Colma and the City of Half Moon Bay in negotiations regarding property tax allocation and recovered \$6 million for these four cities. The primary issues were Tax Equity Allocation and ERAF.

San Mateo County Cities
Property Tax Administration Fees

Representing fifteen cities in San Mateo County asserting the claim that the Property Tax administration fees charged by the County are too high.

Scherzer v. City of East Palo Alto
San Mateo County Superior Court

Defended the City of East Palo Alto in a class action lawsuit challenging the City's utility user tax under Proposition 62.

City of Saratoga v. County of Santa Clara
Binding Arbitration

Successfully obtained through binding arbitration an increase in the amount of property tax allocated by the County of Santa Clara to the City of Saratoga. The case focused on the City's Tax Equity Allocation, and the discontinuation of a local tax.

City of Scotts Valley v. County of Santa Cruz
San Mateo County Superior Court
First District Court of Appeal

Currently representing the City of Scotts Valley in litigation against the County of Santa Cruz regarding the allocation of property taxes. The primary issue is the interaction of Tax Equity Allocation with tax increment received by the City's redevelopment agency and contributions to ERAF. The trial court ordered the County to reallocate more than \$2 million in back taxes to the City. This order is on appeal.

City of South San Francisco v. San Francisco International Airport
Out-of-court dispute

Advised the City of South San Francisco on the application of its business license tax on parking facilities to a parking lot at the San Francisco Airport. Prepared a successful ballot measure to rewrite the business license tax on parking facilities as an excise tax on the act of parking.

Traders Sports, Inc. v. City of San Leandro
Alameda County Superior Court
First District Court of Appeal
93 Cal.App.4th 37 (2001)

Successfully defended a challenge to the City of San Leandro's business license tax on the sale of concealable firearms. The primary question was whether a charter city was constrained by Proposition 62.

United Rock Products Corporation v. City of Highland
Riverside County Superior Court

Defended a challenge to the City of Highland's business license tax on the excavation and processing of rock. The lawsuit involved claims concerning equal protection, due process, interstate commerce, and double taxation.

United Rock Products Corporation v. City of Irwindale
Los Angeles County Superior Court

Successfully defended a challenge to the City of Irwindale's business license tax on the excavation and processing of rock. The lawsuit involved claims concerning equal protection, interstate commerce, double taxation, SMARA (Surface Mining and Reclamation Act of 1975), and the regional welfare doctrine.

White v. City of Stockton
San Joaquin County Superior Court

Successfully defended a challenge under Proposition 62 to the City of Stockton's utility user tax.

Land Use

Affinito v. City of Fort Bragg
Mendocino County Superior Court

Defended the City of Fort Bragg in a challenge brought by a hotel that had been denied a Coastal Development Permit. The hotel asserted takings and due process claims.

Allen v. City of Petaluma
Sonoma County Superior Court

Successfully obtained a dismissal in the trial court of a lawsuit filed by a developer contending that a subdivision in the City of Petaluma was automatically approved under the Permit Streamlining Act.

Eden Gardens v. City of Hayward
Alameda County Superior Court

Defending the City against the claim that its regulations for the conversion of rental mobilehome parks into resident-owned mobilehome parks constituted a regulatory taking.

Mass v. City of Brentwood
Contra Costa County Superior Court

Successfully defended challenge to issuance of a variance for a back yard cabana.

Palo Mobile Estates Associates v. City of East Palo Alto
San Mateo County Superior Court

Defended the validity of the City of East Palo Alto's regulations for the conversion of rental mobilehome parks into resident-owned mobilehome parks.

Palo Mobile Estates Associates v. City of East Palo Alto
United States District Court, Northern District of California

Defending the City of East Palo Alto against the claim that regulations for the conversion of rental mobilehome parks into resident-owned mobilehome parks constitute a regulatory taking.

Redwood Christian School v. County of Alameda
United States District Court, Northern District of California

Defended the County of Alameda in a challenge to the denial of a conditional use permit for a religious school. The plaintiff claimed violations of the Religious Land Use and Institutionalized Persons Act, the Free Exercise Clause, and the Equal Protection Clause.

Wal-Mart Stores, Inc. v. City of Turlock
United States District Court, Eastern District of California
483 F.Supp.2d 987 (E.D. Cal. 2006)
483 F.Supp.2d 1023 (E.D. Cal. 2007)

Successfully defended the City of Turlock against challenges brought by Wal-Mart challenging the City's adoption of an ordinance prohibiting Discount Superstores (e.g., Wal-Mart Supercenters, SuperTargets, and Super Kmart's). Wal-Mart claimed that the ordinance violated the Equal Protection Clause, the Commerce Clause, and was unconstitutionally vague.

Wind River Woodland Partners v. City of East Palo Alto
San Mateo County Superior Court
First District Court of Appeal

Defended the City against a Permit Streamlining Act claim by an apartment complex owner contending that its application for a condominium conversion was automatically approved by operation of law.

Other Government Law Matters

Harris v. Torr

First District Court of Appeal

Successfully defended the Sweetwater Springs Water District in a lawsuit brought by a member of the board of directors of the water district who sought to obtain confidential records held by the water district. The case hinged on the question of whether a board member has standing to sue the board on which he or she sits and the application of the attorney-client privilege to a government entity.

Hotel & Motel Association of Stockton v. City of Stockton

United States District Court, Eastern District of California

Successfully defended a facial challenge to the City of Stockton's hotel regulations.

J.B. Hunt Transport Inc. v. City of Stockton

United States District Court, Eastern District of California

Successfully defended a challenge to the City of Stockton's ordinance providing for the forfeiture of vehicles used in the solicitation of a prostitute or the procurement of drugs.

Loeffler v. City of Petaluma

United States District Court, Northern District of California

Defended the City of Petaluma in a due process challenge to its administrative process for impounded vehicles.

Pike v. City of Petaluma

Sonoma County Superior Court

Defended the City of Petaluma in a due process challenge to the evidentiary procedures in its administrative hearings for impounded vehicles.

Placer County LAFCo v. Nevada County LAFCo

Placer County Superior Court

Successfully represented the Truckee Sanitary District, which has territory in both Placer and Nevada counties, in a lawsuit between the Placer County LAFCo and the Nevada County LAFCo concerning the question of which LAFCo has jurisdiction to determine the District's sphere of influence. Upheld on appeal at (2006) 135 Cal.App.4th 793.

Rent Stabilization Board of the City of East Palo Alto v. City of East Palo Alto
San Mateo Superior Court
First District Court of Appeal

Successfully defended in trial and on appeal the City of East Palo Alto in a lawsuit brought by the City's Rent Stabilization Board challenging the City's budget. The primary question was whether a general law city can create an independent rent control board.

San Andreas Youth Soccer Organization v. City of San Carlos
United States District Court, Northern District of California

Successfully defended the City of San Carlos in a challenge to the City's field use policy for allocating the City's playing fields, which gave priority to residents. The plaintiff claimed the policy violated equal protection. The plaintiff also challenged the City's regulation of temporary signs for community activities, which the plaintiff claimed violated the First Amendment.

City of San Bruno v. Superior Court
First District Court of Appeal

Successfully reversed by writ to the court of appeal a superior court's order requiring depositions of the City's finance director and former mayor.

City of South San Francisco v. Superior Court
First District Court of Appeal

Successfully reversed by writ to the court of appeal a superior court's order requiring the depositions of members of the City of South San Francisco City Council and Planning Commission.

City of Stockton v. Superior Court
Third District Court of Appeal

Successfully reversed by writ to the court of appeal a trial court's refusal to comply with the City of Stockton's peremptory challenge to a judge.

Thompson v. City of Petaluma
Sonoma County Superior Court

Defended a challenge to the City of Petaluma's regulations for the towing, impound, and sale of cars.