

**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
150 Cal.App.4th 747 (2007)

Filed 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
California Supreme Court
55 Cal.4th 707 (2013)

Filed amicus briefs on behalf of the League of California Cities in the Court of Appeal and the California Supreme Court regarding the interaction of the Property Tax Administration Fee, the Triple Flip, and the Vehicle License Fee backfill.

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.

Citizens for Fair REV Rates v. City of Redding
Third District Court of Appeal

Filed amicus brief on behalf of the League of California Cities in an appeal challenging electricity rates under Proposition 26.

City of Brentwood v. Campbell
First District County of Appeal

Representing 27 cities and districts in Contra Costa County in a challenge to the County Auditor-Controller's method of allocating the cost of property tax refunds.

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

Filed amicus brief on behalf of the League of California Cities in an appeal regarding the amount of interest a county should pay on Property Tax Administration Fee overcharges.

City of Dinuba v. County of Tulare
California Supreme Court
41 Cal.4th 859 (2007)

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.

City of Hayward v. County of Alameda
Out-of-court dispute

Represented the City of Hayward to recover excess Property Tax Administration Fees. Negotiated a refund of six years of fees.

City of Modesto v. County of Stanislaus
Alameda County Superior Court

Representing the City of Modesto in a lawsuit to recover excess Property Tax Administration Fees.

City of San Carlos
Out-of-court dispute

Advised and represented the City of San Carlos in a Proposition 218 challenge to sewer fees.

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
201 Cal.App.4th 1 (2011)

Recovered \$2.2 million of property taxes for the City of Scotts Valley that had been improperly withheld by the County of Santa Cruz. The primary issue was the interaction of Tax Equity Allocation with tax increment received by the City's redevelopment agency. The Court of Appeal's opinion contains the most complete discussion of post-Proposition 13 property tax allocation of any reported decision.

City of Scotts Valley v. County of Santa Cruz
Santa Cruz County Superior Court

Representing the City of Scotts Valley in an action to recover excess Property Tax Administration Fees.

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.

City of Watsonville v. County of Santa Cruz
Santa Cruz County Superior Court

Represented the City of Watsonville in an action to recover excess Property Tax Administration Fees.

**Contra Costa County Cities
Out-of-court dispute**

Representing 16 cities in Contra Costa County to recover excess Property Tax Administration Fees. Obtained a refund for six years with interest.

***Gray v. City of Napa*
Napa County Superior Court**

Successfully defended the City of Napa against a Proposition 218 challenge to the rates charged by its water utility.

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

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

***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 the 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
Out-of-court dispute

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.

Sipple v. City of Alameda
Los Angeles County Superior Court
Second District Court of Appeal

Defending the cities of Benicia, Gonzales, Hayward, Hercules, Modesto, Palo Alto, Redwood City, San Luis Obispo, Santa Barbara, and Soledad against a statewide class action that seeks the refund of utility user taxes collected by AT&T Wireless on charges for internet service in violation of the Internet Tax Freedom Act. Demurrer was sustained without leave to amend, and the case is now on appeal. The primary issues are standing, class action procedure, and the ability of local claims ordinances to prohibit class claims.

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.

Biddle v. City of Brentwood
Contra Costa County Superior Court

Defended the City of Brentwood against claims that a city-constructed wall caused flooding on private property. Settled for nuisance value with no cost to the City.

Eden Gardens v. City of Hayward
Alameda County Superior Court

Defended the City of Hayward against a claim that its regulations for the conversion of rental mobilehome parks into resident-owned mobilehome parks constituted a regulatory taking. Settled for nuisance value.

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

Successfully defended the City of East Palo Alto against claims that it improperly issued building permits.

Mass v. City of Brentwood
Contra Costa County Superior Court

Successfully defended challenge to issuance of a variance by the City of Brentwood 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

Defended the City of East Palo Alto against a claim that its regulations for the conversion of rental mobilehome parks into resident-owned mobilehome parks constituted a regulatory taking. The case was settled for a nominal amount

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 claims brought by Wal-Mart challenging the City's adoption of an ordinance that prohibited 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 of East Palo Alto against a Permit Streamlining Act claim by an apartment complex owner who contended that an application for a condominium conversion had been automatically approved by operation of law.

Other Local 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 district who sought to obtain confidential records held by the 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.

Rental Housing Owners Association of Southern Alameda County, Inc., v. City of Hayward

Alameda County Superior Court

First District Court of Appeal

200 Cal.App.4th 81 (2011)

Successfully defended the City of Hayward's ordinance that provides for the inspection of residential rental housing units. The plaintiffs argued that provisions of the ordinance were preempted by the California Constitution and the Government Code and violated the Fourth Amendment of the United States Constitution.

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 of San Bruno'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.