



Local Ballot Measures: Continuing Legal & Political Points of Division

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A recent swell of local ballot measures throughout California and the controversy and case law that has resulted serve to remind the Elections Law/Land use lawyer that more than a little caution is warranted, as the web of controlling laws for drafting, qualifying, campaigning, funding, and reporting regarding ballot measures creates more than a few traps for the unwary. In addition to this uncertainty, legislation is pending before the Governor that would impose new requirements on local government sponsored measures.

1. **@ Home in Encinitas** – This City Council-sponsored ballot measure sought to bring the City into conformity with State Housing Law, after a local court determined the City to be out of compliance. The wrinkle was a previously adopted local voter initiative (in Encinitas) that required an affirming vote of the City’s electorate for certain General Plan, Specific Plan and Zoning Code amendments, like those that would be involved in the City’s Housing Update. After a full EIR, exhaustive public outreach, countless workshops and hearings, as well as full Planning Commission and City Council support, the Council-sponsored ballot measure was placed on the ballot. However, unlike voter-sponsored measures, city-sponsored measures generally cannot involve the expenditure of any public-funds or resources for campaigning, etc. In fact, possible civil and criminal consequences from violations of the misuse of public funds to support a ballot measure can include, without limitation, disqualification from holding office in California, reimbursement to the agency for the value of the resources used; payment of attorneys fees for the party bringing a challenge; and up to \$1,000 for each day resources were misused plus 3-times (3x) the value of misused public resources. (See, e.g., Penal Code § 424; *Tenwolde v. County of San Diego*, 14 Cal.App.4th 1083 (1993); *People v. Battin*, 77 Cal.App.3d 635 (1978); Gov. Code § 8314.).

With little organized campaign or money behind the measure, ultimately, @ Home in Encinitas was rejected by the Encinitas voters, leaving the City in the throes of Housing Law noncompliance, and back in court

2. ***Wilson v. County of Napa*, 9 Cal. App.5th 178 (2017)** – In this First Appellate District opinion, the Court upheld the Napa County Registrar’s decision to reject a voter-sponsored initiative petition on the grounds that the initiative failed to meet the full text rule. In that case, the court considered a local Napa County land use ballot

measure entitled the Water, Forest and Oak Woodland Protection Initiative of 2016. The initiative included a new permit requirement for any removal of certain oak trees from agricultural land. The new permitting process required compliance with existing best management practices set forth in the 2010 Napa County Voluntary Oak Woodland Management Plan. However, while the initiative made those earlier voluntary best practices now legally binding, the initiative did not include the text of those best practices within its legislative text. Section 9101 of the California Elections Code requires an initiative petition to contain the full text of the legislative measure that the initiative proposes to enact. The Court concluded that the initiative violated the full text rule because the initiative sought to make a new binding law from provisions that were voluntary under current law. As such, the text of the new law should have been included in the initiative.

In reaching its decision, the Court emphasized that the purpose of the full text requirement is both to provide sufficient information so that registered voters can educate themselves in order to intelligently evaluate whether to sign the initiative petition, and to avoid confusion.

3. **Assembly Bill 195 (AB 195)** – Current law requires that any local citizen-initiated ballot measure that imposes a tax or raises a tax to include in the ballot statement the amount of money to be raised annually and the rate and duration of the tax to be levied. AB 195 would expand this requirement to apply to any measure proposed by a local governing body. AB 195 also requires that the ballot statement of the measure shall be a true and impartial synopsis of the purpose of the proposed measure, and shall be in language that is neither argumentative nor likely to create prejudice for or against the measure. AB 195 is currently pending before the Governor. Although AB 195 is considered a technical cleanup bill, if signed into law, a local agency risks having its proposed measure disqualified from appearing on the ballot if compliance is not met.