

PRIORITY

FOCUS

Analysis, Commentary and Updates on Legislative and Policy Issues that Affect California Cities

February 4, 2005
Issue #5-2005

COMING UP:

Senate Budget
Subcommittee 4 -
overview hearing
on Regional Im-
pacts of Proposed
Transportation
Funding. 2/10/05-
Long Beach

NEW RESOURCE CENTER FOR TAKINGS-PROPERTY
RIGHTS ISSUES

With the U.S. Supreme Court agreeing to review three "takings" cases this year, the issue of property rights has once again emerged as an important issue for local officials to monitor. The issue is likely to capture some news headlines in the coming weeks as oral arguments in two of the cases will take place later this month on February 22. *For more see page 4.*



GOVERNOR APPOINTS FORMER LEAGUE BOARD MEMBER AS
LOCAL GOVERNMENT AFFAIRS DIRECTOR

Governor Arnold Schwarzenegger this week announced the appointment of former League board member Pat Dando to serve as director of local government affairs in the Office of the Governor. *For more see page 5.*



LEAGUE GRASSROOTS ADVOCACY WINS NATIONAL AWARD

The American Society of Association Executives has chosen the League to receive an **Award of Excellence** for its *Grassroots Campaign to End State Raids on Local Revenues*. The award recognized the League's outstanding grassroots advocacy in 2004 on the state budget, and in getting a measure on the ballot to protect local revenues. *For more see page 6.*

Want More Details
on Bills?

Visit the League of
California Cities
Website at
[www.cacities.org/
legtracking](http://www.cacities.org/legtracking).

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INSTITUTE FOR LOCAL (SELF)* GOVERNMENT RELEASES NEW ETHICS LAW REFERENCE

Hot off the press this week is the Institute for Local (Self)* Government's *A Local Official's Reference to Ethics Laws*. This 2005 update of the 2002 *Ethics Law Guide* includes new developments in ethics laws, including the new gift limitation amounts. The material has been reorganized and expanded to parallel the Institute's popular ethics law bookmark ("Key Ethics Law Principles for Local Officials"). The *Reference* also reflects the League Ethics Education Task Force's recommendations that Institute ethics resources include more case studies and emphasis on the consequences of non-compliance.

These materials were produced as part of the Institute's ongoing effort to provide resources to assist local officials in their service to their communities and promote public confidence in local government. Copies of the bookmark and the *Reference* are being sent to each city care of its city clerk in early February. The Institute is grateful to the **Meyers Nave law firm** for its support of the *Ethics Law Reference* project, along with the many local agency attorneys and officials that provided feedback and counsel on the content of the *Reference* (see the inside back cover for a list). The Institute is also grateful to the **Richards, Watson and Gershon law firm** for its support of the 2005 ethics law bookmark.

As with all Institute publications, copies of both the *Ethics Law Reference* and the bookmark are available online in electronic form from the Institute's website: www.ilsq.org/trust. Hard copies are also available through CityBooks, www.cacities.org/store or 916/658-8257. Proceeds from hardcopy sales support the Institute's work in the ethics area.

* As part of its 50th anniversary celebration, the Institute is in the process of streamlining its name to become the "Institute for Local Government." Stay tuned for more anniversary celebration news!

HOUSING FORUMS EXPLORE FUNDING, INFRASTRUCTURE

Two upcoming forums in Santa Clara and Fresno will explore funding, infrastructure and other issues relating to California's urgent need for additional housing, and especially affordable housing.

The Santa Clara event is billed as the California Housing Trust Summit. It will be held Friday, February 25, 2005, from 9:30a.m. to 2:30 p.m. at Applied Materials Global University, 3050 Bowers Avenue, Santa Clara.

This event will bring together California's housing trust community to share information on best practices, and discuss the future of trusts, including potential new sources of funding for housing. One panel will also discuss infrastructure and capacity building concerns, including how to get business labor and other community sectors involved; what's the most effective role for public officials on a trust board; pros and cons of various organizational structures (e.g. non-profit, JPB, etc.), what unique sources of funding have trusts secured and how to sustain these efforts. There will also be a pre-conference "nuts and bolts" workshop on how to organize a trust from 8-9:30am, and a post-conference discussion from 2:30-4:30pm, for those interested, on the means by which California's trusts might work together on common goals. Sunne McPeak is speaking.

For information please contact Anita Villarreal, at (408) 501-7864 or send an email reply to avillarreal@svmg.org.

Another event in the South San Joaquin Valley area carries the title: *What's Up With Affordable Housing in Fresno?* It will be held Friday, February 11, from 9 a.m. to noon at the Hope Lutheran Church, 364 East Barstow, Fresno. For information please contact The Fresno Housing Alliance, (559) 276-2304 or Anthony Miranda, Habitat for Humanity, (559) 237-4102.

UPDATE ON LEAGUE FRIEND-OF-THE-COURT FILINGS

Learn more about League friend-of-the-court action in appellate cases affecting California cities. A brief summary of the cases and thanks to volunteer writers appear below.

Adult Business Regulations Requiring Two Foot Zone Between Dancers and Patrons Upheld

The Ninth Circuit Court of Appeals recently affirmed a district court's ruling concluding that a local ordinance requiring adult cabaret dancers to remain two feet away from patrons was constitutional. The ordinance was adopted to reduce the secondary effects of adult entertainment.

The League thanks Scott Bergthold, for writing the friend-of-the-court brief on behalf of the League. The name of the case is *Gammoh v. City of La Habra* (9th Cir., Jan. 26, 2005).

Ordinance Requiring Landlords to Evict Tenants Police Suspected of Drug or Gang Related Activity Associated with Property Found Unconstitutional

A court of appeal agreed with the trial court and concluded that an ordinance requiring landlords to undertake eviction proceedings against occupants of a rental unit when the chief of police suspects a tenant has engaged in or permitted illegal drug activity, gang-related crime, or a drug-related nuisance in or near the rental property is unconstitutional. The court ruled that the ordinance violated tenants' procedural due process rights because it imposed a substantial risk of erroneous deprivation of property rights through compelled eviction litigation on landlords, unwarranted fines and penalties, and countersuits by tenants.

The League thanks Matt Gorman with Alvarez-Glasman & Colvin for writing the brief on behalf of the League. The name of the case is *Cook v. City of Buena Park*, (Dist. 4, Jan. 28, 2005).

Local Ordinance Regulating Predatory Lending Preempted

The California Supreme Court recently concluded that a local ordinance that sought stricter regulation of predatory lending practices of state financial institutions was preempted by state law. The court reached its conclusion despite the fact that the Legislature specifically rejected language that would have expressly preempted local regulation in this area.

The League thanks John Fellows, City Attorney, Torrance, for writing the friend-of-the-court brief on behalf of the League. The name of the case is *AFSA v. City of Oakland*, (Jan. 31, 2005).

Challenge to Issuance of Comprehensive Municipal Stormwater Sewer Permits

The court of appeal has ruled that regional and state water control boards may issue comprehensive municipal stormwater sewer permits that contain water quality standard provisions more stringent than the federal Clean Water Act's "maximum extent practical" standard of stormwater pollutant abatement. These standards are allegedly too stringent and impossible to satisfy and will result in inconsistent application throughout the state.

The League thanks Rufus C. Young, Jr. of Burke, Williams & Sorensen, and John Roddy of the San Francisco City Attorney's Office, for writing the friend-of-the-court letter in support of review on behalf of the League. The name of the case is *Building Industry Association of San Diego, et al. v. California State Water Resources Control Board*.

Who is the Client?

The question "Who is the client?" has come up in a case involving a former official who pleaded guilty to a felony conflict of interest charge and subsequently sued the public entity's former attorney for malpractice and breach of fiduciary duties. The issue is whether the former official

Continued on Page 4

LEGAL ADVOCACY from page 3 RESOURCE CENTER from page 1

had an attorney-client relationship with the attorney, or whether the attorney's client was the agency. The court of appeal has stayed the trial and is seeking additional briefing on the public policy concerns of shifting liability for criminal conduct to a public agency.

The League thanks Manuela Albuquerque, City Attorney, Berkeley, for writing the friend-of-the-court brief in support of the Port of San Diego's petition for writ of mandate on behalf of the League. The name of the case is Chapman, et al. v. Malcolm.

Constitutionality of RLUIPA

A local church desired to relocate in a downtown redevelopment zone. The property was being leased to a local grocery store; it was the only grocery available to downtown residents. The city denied the church's CUP. The church brought an action under RLUIPA. The district court held that RLUIPA was unconstitutional.

The League thanks Jeffrey T. Melching of Rutan & Tucker for writing the friend-of-the-court brief on behalf of the League, the American Planning Association, and the International Municipal Lawyers Association. The name of the case is Elsinore Christian Center, et al. v. City of Lake Elsinore.

Copies of recent filings are available at: www.cacities.org/recentfilings.

Following guideline changes relating to the League's friend-of-the-court participation that were adopted in 2002, typically briefs are filed on behalf of the League rather than on behalf of joining cities.

To request League amicus assistance visit: www.cacities.org/requestamicus.

For more information about the League's Legal Advocacy Program visit: www.cacities.org/legaladvocacy.

The case that has garnered the most attention (including a two page spread in People Magazine!) is *Kelo v. City of New London*, which considers the extent to which land may be condemned for economic development is a "public use" under the Takings Clause (see Jan. 28 Priority Focus story). But the other two cases also raise important issues. In *San Remo Hotel v. City and County of San Francisco*, the Court will consider whether owners may raise a takings claim in federal court after they have litigated the same claim in state court. If the court agrees with developers, it may mean an significant increase in litigation costs for local agencies. And in *Lingle v. Chevron, USA*, the Court will consider the extent to which economic regulations (in this case, the state of Hawaii set limits on gas station lease rates) may be deemed a taking of property.

In light of these developments, the Institute for Local Government has updated its online Takings Resource Center to keep local officials better informed of developments in this area of the law. In addition to providing summaries to the pending cases listed above, the Center includes a number of resources of value to local officials, including the recent white paper: *Property Rights and Land Use Regulation: A Primer for Public Agency Officials*. Other site materials include:

- A sample variance procedure that can be used to gain better information during the application process and avoid litigation
- Links to summaries and opinions of landmark takings decisions
- Impact fees section with the best thinking about the constitutional limits of imposing fees and dedications
 - A PDF copy of the Takings Litigation Handbook for attorneys
 - Commentary about the takings issue from state and national experts

The Takings Resource Center can be found on the Institute's website at www.ilsg.org/takings. For more about the Institute's work on land use and planning issues, please visit www.ilsg.org/landuse.

GOVERNOR'S APPOINTMENTS from page 1

Dando was a member of the San Jose City Council for 10 years, serving as vice mayor for two years. Dando was also active in the League of California Cities (LCC) and National League of Cities (NLC) during her tenure as a local elected official. In addition to serving on the League board of directors, Dando served as chair of the League's Transportation, Communication and Public Works Policy Committee. She also served as chair of NLC's Transportation and Infrastructure Services Policy Committee, and as a member of the NLC Working Group on Homeland Security.

The League issued a press statement praising Dando's appointment. (See article, this page.)

The governor also made two appointments to the Governor's Office of Planning and Research (OPR). They are:

Sean Walsh, appointed director of OPR. Walsh currently is president of Walsh & Walsh, a government relations and communications firm. Former assignments include the vice chairmanship of the Little Hoover Commission; and four years as deputy chief of staff and press secretary to Governor Pete Wilson.

Jan Boel, appointed chief deputy director of the Governor's Office of Planning and Research. Boel has served as the interim director of the Office since 2004. She previously served in several roles at AT&T, beginning as district manager for public policy, and then serving as California state director and later as vice president of government affairs.

LEAGUE OF CALIFORNIA CITIES STATEMENT PRAISING GOVERNOR'S APPOINTMENT OF PAT DANDO TO LOCAL GOVERNMENT POSITION

The following statement was released to statewide media following the governor's announcement of Pat Dando's appointment.

Pat Dando has been an outstanding leader whose dedication and service to her city of San Jose, and all California cities, was reflected in her years of involvement with the League of California Cities.

Dando helped shape the direction of the League during a critical period for cities as a member of the League board of directors from 2002 to 2004. She also served as vice chair, and then chair, of the League's Committee on Transportation, Communications and Public Works....

Pat Dando will bring extensive knowledge of local government issues and concerns to her new position with the Governor's Office. More importantly, Pat is a problem solver, who knows how to bring people together to find solutions to shared problems.

The League of California Cities looks forward to working with Pat Dando in the weeks and months ahead, and thanks Governor Schwarzenegger for his appointment of her to this key position.

**2005 LEAGUE OF
CALIFORNIA CITIES
ANNUAL CONFERENCE**

**OCTOBER 6-8
MOSCONE CENTER
SAN FRANCISCO**

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NAME-CHANGE FOR INSTITUTE FOR LOCAL (SELF) GOVERNMENT

Ever wonder what the "self" in Institute for Local Self Government means? So have we. As part of a reflection process precipitated by the Institute's 50th anniversary, the Institute has decided to simplify its name to the *Institute for Local Government*.

The Institute for Local Government is the League's 501(c)(3) research affiliate. Founded in 1955, the Institute's mission is to develop forward-thinking resources to assist local officials in their service to their communities. The Institute's work is presently focused in four key areas:

- Ethics in public service;
- Housing and land use;
- Fiscal stewardship; and
- Civic engagement and public participation.

Check out the Institute's website (still www.ilsq.org for the time being) for more information about the Institute's work and to access a wealth of resources on these topics.

AWARD WINNER from page 1 •••••

"Your program truly embodies the spirit of the Associations Advance America campaign," wrote ASAE President and CEO John H. Graham IV, in his letter announcing the award. "Please accept ... ASAE's recognition of your outstanding efforts to make America a better place in which to live."

"It's a great honor to receive this award," said League Executive Director Chris McKenzie. "It recognizes the effectiveness of the League's Grassroots Network, and the vision of city leaders who worked to give the League a powerful new tool to increase our overall advocacy efforts."

Rosenberg's Rules of Order: Simple Parliamentary Procedures for the 21st Century

Rosenberg's Rules of Order Simple Parliamentary Procedures for the 21st Century covers the rules of parliamentary procedure is an easy to follow format that will enhance the set of rules currently practiced at your meetings. This publication is a modern day version to the well-known "Robert's Rules of Orders" that simplifies parliamentary procedure yet retains the basic tenets of order to which we are accustomed.

Rosenberg's Rules of Order covers several meeting procedures including: agenda items; motions; discussion and debate; meeting courtesy and decorum; and public input. This publication is a "must have" resource for anyone who chairs or attends governing meetings.

Rosenberg's Rules of Order is available from the League for \$5.00 plus shipping & handling; price includes sales tax. There is a ten percent discount on orders of five or more of the same publication.

Questions? Contact League Publications at 916/658-8257 or order online at: www.cacities.org/store.