

VENTURA
SUPERIOR COURT
FILED

JUN 22 2021

BRENDA L. McCORMICK
Executive Officer and Clerk
By: *[Signature]* Deputy

COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

CITY OF OXNARD,

Plaintiff,

vs.

AARON STARR, an individual; and DOES
1-25,

Defendants.

) Case No.: 56-2020-00539039-CU-MC-VTA
)
) STATEMENT OF INTENDED DECISION
) ON SUBMITTED MATTER

This matter came on calendar for trial before the undersigned court on May 24, 2021. Ms. Holly Whatley appeared for Plaintiff, City of Oxnard. Mr. Steven Woocher appeared for Defendant, Aaron Starr. Each side had timely submitted trial briefs, and after argument from both sides the Court took the matter under submission.

Aaron Starr is a resident of the City of Oxnard who submitted five initiative proposals to the City Clerk pursuant to the applicable provisions of the Elections Code. Four of these proposed initiatives had received the required registered voter signatures to qualify for inclusion on the Ballot for the June 2021 election. The City filed a pre-election challenge contending that each was not a proper exercise of the initiative power of the electorate for inclusion on the June ballot. The court

1 rejected this challenge, concluding that it was better to see whether or not they
2 obtained voter approval before examining their content for legality. The City was
3 ordered to comply with Elections Code section 9215 and either adopt the initiatives
4 or put them on the ballot. The City chose to put them on the ballot. Measure M
5 relating to the conduct of City Council meetings received more than 50% of the
6 votes cast. Measure N, a tax related initiative, also received more than 50% of the
7 votes. The remaining two initiatives were defeated.

8 The City's pre-election challenge to the initiatives was in the form of a
9 declaratory relief action, and named Aaron Starr, the sponsor of the initiatives, as
10 the defendant. Mr. Starr responded with an answer, a motion for a writ of
11 mandate, and a CCP section 425.16 motion to strike. The court granted Mr. Starr's
12 motion for a writ of mandate. Everything else was continued until after the
13 election. There are potential procedural issues such as the resolution of the CCP
14 section 425.16 motion, as well as the propriety of the City as a plaintiff and Mr.
15 Starr as a defendant in the City's declaratory relief action. The substantive issue
16 of the validity of Measures M and N have been briefed by knowledgeable counsel
17 on both sides who have agreed with the Court's suggestion that the case proceed
18 directly to those issues, and not to stop along the way to resolve the CCP section
19 425.16 motion, or the status of the parties issues. The Court believes that the
20 substantive issues(s) need to be resolved, and better to resolve them sooner than
21 later. This case has all the earmarks of a dispute that could legitimately be taken to
22 the Court of Appeal not matter what the decision of the trial court.

23 One concept which needs to be emphasized early is that the Court's role is
24 not one of examining Measure M and N from a qualitative perspective. As stated
25 by Starr in his brief, on reviewing the legality of legislation, courts "...may not
26 undertake to evaluate the wisdom of the policies embodies in such legislation;
27 absent a constitutional prohibition, the choice among competing policy
28 considerations in enacting laws is a legislative function." *Superior Court v.*

1 *County of Mendocino*, 13 Cal.4th 45/53. *Mendocino* did not involve an initiative,
2 but the principle applies. Courts should not substitute their personal perceived
3 wisdom for the right of the electorate to enact properly crafted legislation, however
4 ill-conceived it may be.

5 Measure M - The focus of Measure M is the conduct of City Council
6 meetings. The measure contains specific requirements as follows: (1) staff
7 presentations for each agenda item shall be videotaped in advance and made
8 available for advance public viewing before the Council meeting; (2) the primary
9 role of city staff at meetings is to answer questions from the Council, and not to re-
10 enact the previously recorded presentations; (3) set starting time for committee and
11 Council meetings; (4) regulate time for public comment by citizen meeting
12 attendees; (5) mandates that Roberts Rules of Order, and not Rosenberg's Rules be
13 used to control how Council meetings are conducted; (6) mandates that a
14 parliamentarian be hired to train city employees in the use of Roberts Rules.

15 In analyzing Measure M, it is necessary to avoid falling into the trap of
16 evaluating its requirements from a qualitative perspective. That is, asking if the
17 Measure M mandates a good idea or a bad idea. The City argues that they are an
18 exercise in micromanagement where none is needed. At least as to the
19 micromanagement aspect, this is arguably true. What's next, requiring that the
20 Council and staff use #2 pencils? The focus, however, should be on whether
21 Measure M requirements are a proper exercise of the initiative power, even if it
22 imposes an inconvenience on the City in how it must conduct its City Council
23 meetings.

24 This leads to a consideration of "legislative" vs. "administrative." As
25 important as the power of the initiative is to the citizenry, that power has been
26 repeatedly held to be limited to legislative acts (which set policy), and may not
27 extend to administrative acts (which implement policy). Local initiatives moreover
28 may not supersede legislation which addresses matters of statewide concern. *City*

1 of *San Diego v. Dunkl*, 86 Cal.App.4th 384.

2 All this is prelude to consideration of the Brown Act found at Government
3 Code section 54950, et seq. Stated briefly, the Brown Act requires the business of
4 local government to be conducted at open and public meetings except in certain
5 limited circumstances. The Brown Act moreover has been found to address
6 matters of statewide concern, and thus is not unconstitutional as applied to a City
7 Council. *San Diego Union v. City Council of San Diego*, 146 Cal.App.3d 947/957.
8 The importance of this is that in addressing matters of statewide concern, the
9 Brown Act sets forth policy, and the applications of these statements of policy are
10 administrative in nature. As such, they cannot be modified by initiative, assuming
11 that the local governing body is acting in compliance with the policy as stated (and
12 required) by the Brown Act. There is no contention by Starr that the City's
13 existing procedures are out of compliance with the Brown Act.

14 A further consideration is the scope of the "legislative body" which the
15 Brown Act regulates. Government Code section 54952 defines "legislative body,"
16 and in so doing, does not include the electorate. It calls out governing bodies,
17 commissions, committees and boards. It does not say "electorate," "citizenry" or
18 any other category into which the electorate acting through an initiative can be
19 placed. This exclusion of the electorate from a municipality's local government is
20 recognized in *California Cannabis v. City of Upland*, 3 Cal.5th 924/936-939.
21 Government Code section 54953 et seq. states that meetings of the legislative
22 body of a local agency shall be "open and public." Government Code section
23 54954 et seq. states the notice requirement(s) for meetings, the publication
24 requirement for a meeting agenda, the public comment requirements, and the
25 limited subjects which the public body may discuss in a closed session. All of these
26 mandates had been in place and followed by the City of Oxnard before Proposition
27 M was placed on the ballot. Proposition M is an attempt to modify all of those
28 statutorily compliant measures. As such, the Court finds that it is an impermissible

1 administrative interference with the workings of the Council, and the Court finds
2 that it is invalid for that reason.

3 Measure N - Measure N is not a tax measure. It is an effort to direct the
4 spending of public funds towards street maintenance and improvement. The
5 purpose is laudatory. What resident of any city has not complained about the
6 condition of the streets he/she drives on, and fumed at the apparent unwillingness
7 or inability of the city to address these problems. As such, there can be no
8 argument that Measure N addresses either a non-existent or improper problem.

9 The issue, however, is whether or not Measure N goes about it in a legal
10 manner.

11 Although Measure N is not itself a tax measure, it is linked to an existing tax
12 measure, Measure O, which in 2008 raised the sales tax by one-half a per cent.
13 Measure O was a general tax with a sunset date of twenty years. Exhibit D to the
14 City's opening brief indicates that Measure O money is kept as a separate fund,
15 and has been used for a number of purposes, including street maintenance. These
16 street maintenance expenditures approximate seven per cent of the total Measure O
17 receipts. Measure N requires that City streets attain a certain measurable level of
18 improvement (as measured by the Pavement Condition Index) as certified by an
19 outside civil engineering survey. If not, Measure O will sunset at certain dates
20 before the sunset date specified in Measure O itself. The City produces evidence
21 that reaching the Measure N mandated levels of street improvements by the
22 Measure N target dates will take all of the annual Measure O money plus an
23 additional \$170 million from other sources.

24 On the surface, this appears to be prioritizing street maintenance and repair
25 at the expense of other City spending needs, such as public safety. Counsel for Mr.
26 Starr argues that money is "fungible," and the City can deal with this projected
27 shortfall from other sources. Money may be fungible, but it is not unlimited in its
28 availability whether it is a family or a municipality which is trying to make ends

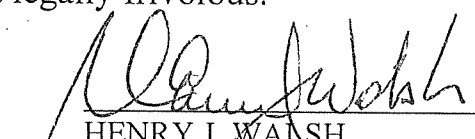
1 meet. That, however, is a qualitative argument which does not control. The issue
2 for the Court is whether or not the initiative power reaches to the budgeting
3 responsibility which is a large part of what a City Council does.

4 The answer is that the initiative power can reach to budgeting, but only
5 under controlled circumstances. The initiative power includes the power to enact
6 taxes (general taxes by a majority vote, special taxes by a two-thirds majority), and
7 taxes whose revenue is devoted to a specific purpose. *Sacks v. City of Oakland*,
8 190 Cal.App.4th 1070. Such conduct falls within the recognized power of an
9 initiative to set policy. What remains beyond the power of an initiative is that of
10 administrative acts. *Dunkl*, supra, 86 Cal.App.4th @388.

11 Measure O did not contain any direction on how to spend the revenue it
12 raised. It was a general tax imposed for general governmental purposes. Measure
13 N directs how Measure O money is to be spent, if it is it survive. A properly
14 constructed initiative could cancel Measure O entirely before its sunset date. What
15 an initiative cannot do, however, is direct how a general tax is to be spent once it is
16 enacted. As with Measure M, Measure N invades this forbidden area of
17 administration intruding as it does on the City Council's power to set a budget.
18 For this reason, the Court finds that it is invalid.

19 This ruling finds that Mr. Starr has no likelihood of prevailing on his SLAPP
20 challenge to the City's declaratory relief action. As such, his motion to strike is
21 denied. Said motion, however, was not legally frivolous.

22 Dated: June 24, 2021


HENRY J. WALSH
Judge of the Superior Court

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PROOF OF SERVICE
CCP § 1012, 1013a (1), (3) & (4)

STATE OF CALIFORNIA)
)
COUNTY OF VENTURA) ss.
)

Case Number: 56-2020-00539039-CU-MC-VTA
Case Title: City of Oxnard v. Starr, et al.

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 800 S. Victoria Avenue, Ventura, CA 93009. On the date set forth below, I served the within:

STATEMENT OF INTENDED DECISION ON SUBMITTED MATTER

On the following named party(ies)

Holly Whatley 790 East Colorado Blvd., Suite 850 Pasadena, California 91101-2109	Fredric Woocher 10940 Wilshire Blvd., Suite 2000 Los Angeles, California 90024
Mark Goldowitz 2611 Andrade Avenue Richmond, California 94804	

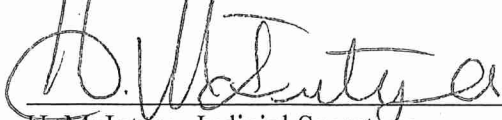
 BY PERSONAL SERVICE: I caused a copy of said document(s) to be hand delivered to the interested party at the address set forth above on _____ at _____ a.m./p.m.

 X **BY MAIL:** I caused such envelope to be deposited in the mail at Ventura, California. I am readily familiar with the court's practice for collection and processing of mail. It is deposited with the U.S. Postal Service on the dated listed below.

 BY FACSIMILE: I caused a courtesy copy of said documents to be sent via facsimile to the interested party at the facsimile number set forth above at ____ from telephone number _____.

 BY ELECTRONIC SERVICE (to individual person): By electronically transmitting a copy/courtesy copy of the document(s) listed above to the email address(es) of the person(s) set forth above/ on the attached service list. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct and that this document is executed on **June 22, 2021**, at Ventura, California.

By: 
H. McIntyre, Judicial Secretary