City Council Can Sponsor Ballot Measure To Repeal Prior Initiative That Restricts Council Action

Elections Code section 9222 allows a city council to propose a ballot measure that repeals or amends a prior initiative. In *Brookside Investment, Ltd. v. City of El Monte* (2d. Dist. No. B267081, Nov. 15, 2016) the court held that section 9222 does not unconstitutionally interfere with the voters' reserved power of initiative, even when the prior initiative restricts council action. In 1988, the El Monte City Council enacted a mobilehome rent control ordinance. Two years later city voters approved an initiative that repealed the rent control ordinance. That initiative also prohibited the council from passing any ordinance relating to the subject of mobilehome park rents, and barred the expenditure of tax revenues in connection with any such ordinance. Several years later, the city council proposed a ballot measure to repeal the initiative. City voters approved the repeal measure, and the city council then enacted new rent control ordinances. Brookside Investment, Ltd., a mobilehome park owner, sued to invalidate the council-sponsored ballot measure, asserting that section 9222 could not constitutionally be applied to allow the city council's measure repealing the prior initiative. The court disagreed. The court first rejected Brookside's argument that section 9222 unconstitutionally interferes with the voters' right of initiative. The court acknowledged that the California Constitution expressly allows the State Legislature to propose ballot measures that repeal or amend prior initiatives, and that it does not contain a similar provision expressly authorizing local governments to do the same. It held, however, that an express constitutional authorization was not necessary. Since 1911, the California Constitution has given the Legislature the power to adopt procedures governing use of the local initiative power, and statutory measures allowing city councils to propose ballot measures that amend or repeal prior initiatives existed both before and after those constitutional provisions were enacted. "In sum, far from withholding the power of local legislative bodies to independently propose ballot measures affecting voter-approved initiative ordinances, the 1911 constitutional amendments gave the Legislature the authority to establish procedures allowing such action." Brookside next argued that the voters have a constitutional right to enact an initiative that validly precludes a council from proposing a hostile ballot measure. It argued that section 9222 could not constitutionally be interpreted to restrict that right. The court was not persuaded. It noted that section 9222, which permits local voters to consider both voter-sponsored and city council-sponsored measures, including proposed ordinances affecting previously approved initiatives, "does not clearly narrow or impair the right of initiative guaranteed in the state Constitution. In either case, amendment or repeal would be accomplished by popular vote." The court concluded, however, that it did not need to decide whether an initiative that purported to preclude a city council from later proposing a hostile ballot measure would impermissibly conflict with section 9222. The El Monte initiative did no such thing. The court interpreted the language of the El Monte initiative to prohibit only the city council's adoption of its own mobilehome rent ordinance without a vote of the people, not a council-sponsored ballot measure. Finally, the court held that the city did not violate the prohibition in the voters' initiative against the expenditure of tax revenues in connection with an ordinance relating to mobilehome park rents. Because the initiative did not preclude the city council from placing its measure on the ballot, the council did not violate the initiative's prohibition against expenditures by incurring the costs typically associated with placing a measure on the ballot.

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