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Appeals court reviews FP-5 tax repeal measure after judge rules against it being on ballot

By Martin Estacio, VICTORVILLE DAILY PRESS

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San Bernardino County Fire Chief Dan Munsey speaks at a county supervisors' meeting on Tuesday, Jan 11, 2022.

A ballot measure seeking to repeal a county fire district tax was given a second chance after a state appeals court said it would review the case after a Superior Court judge ruled the initiative violated elections code.

Acting Presiding Judge Art McKinster of the Fourth District Court of Appeal ordered the court proceedings stayed — or temporarily stopped — on March 30 “pending his court’s determination of the petition on its merits or further order of this court.”

Proponents of the initiative filed the petition to the appeals court, Measure Z, which wants to throw out a parcel tax levied in 2018 to help fund the **San Bernardino County Fire** District. Superior Court Judge David Cohn had ruled against the proponents last week, finding that the initiative petition they used to gather signatures to place the measure on the ballot had false or misleading information.

Cohn granted the fire district’s request that the measure not be included in the upcoming primary election with the tentative ruling. However, the appeals court decision stopped Cohn’s March 29 order, meaning Measure Z will be on the June 7 ballot despite its legal status still being decided.

Friday, April 1, was the deadline by which the ballot had to be processed. A spokesperson for the county Registrar of Voters said the department “was instructed for Measure Z to be included on the ballot.”

Tom Murphy — president of the Red Brennan Group, funding the repeal effort and related legal representation — praised the appeal court’s decision in a statement.

“With any luck, pending the resolution of the merits, it will be presented to the voters this June – where it rightfully belongs,” he said.

The electorate should have approved tax, proponents say Measure Z is the second initiative attempting to repeal the fee assessed on properties after a fire protection zone, FP-5, was expanded more than three years ago. In November 2020, Measure U failed to pass after roughly 52% of voters voted against it. When FP-5 expanded in 2018, the zone annexed over 19,073 square miles of unincorporated land and some cities.

With the expansion, an annual fee of \$157.26 was assessed on all parcels, with the ability to increase the fee up to 3% a year. The current fee stands at \$161.98 after county supervisors approved an increase recommended by the fire district last year. Fire district officials said the tax was necessary to shore up a budget deficit and continue funding existing emergency services that weren’t being covered by property taxes.

Earlier this year, County Fire Chief Dan Munsey said FP-5 tax revenues amounted to \$42.7 million, or 18% of the fire department’s operating budget. Without those revenues, “somewhere between 15 to 17 fire stations would need to be closed districtwide,” with a possible loss of up to one-third of first responders, he said.

Opponents of the tax disagree with the way the FP-5 fee was imposed.

Before county supervisors approved the zone's expansion and its tax in October 2018, they instituted a protest process and sent mailers to affected landowners. The process required an election to determine the fate of FP-5 if 25% of landowners had mailed the forms back saying they opposed the expansion.

If more than 50% protested, the proposed expansion would have been withdrawn entirely. Instead, only about 3% of landowners responded, according to a tally at the supervisors' meeting that year. Measure Z proponents believe a two-thirds vote should have approved the tax of the electorate, typically required for special taxes under the California Constitution.

Last year, the initiative petition circulated to gather signatures for the measure provides the constitutional clause, followed by statements alleged by the fire district to violate elections code.

"Despite this clear language, the FP-5 special tax was imposed by elected representatives on one million county residents without their consent," the petition reads. "Citizens must follow the law, and so must their representatives!!"

Fire district believes measure backers lied in their petition

The fire district argued in a lawsuit the petition contained false or misleading information because the statements imply the tax is unconstitutional even though a judge ruled it to be valid in 2019. San Bernardino Superior Court Judge Donald Alvarez ruled that year against the Red Brennan Group, which had sued to stop the tax.

Alvarez cited earlier court decisions that found language in the constitution requiring a two-thirds vote on general or special taxes didn't address those imposed in annexations like FP-5.

"First, Petitioners presented false and misleading information to the voters to trick them into signing the Initiative," the fire district wrote in a legal brief opposing the appeal court's decision. "And now Petitioners seek to trick this Court into letting their Initiative slip back onto the ballot."

Backers of Measure Z, meanwhile, assert Judge Cohn erred when ruling in the fire district's favor last week to keep the initiative from being published on the ballot. For the initiative to violate the elections code, the false or misleading statements must have been done intentionally, said the proponents' attorney Alexander Frank.

Frank argued intentionality was never proven. He said a 1999 case also established "that only misrepresentations about objectively verifiable matters beyond dispute violate" the elections code making it illegal for someone to intentionally misrepresent or make any false statement in an initiative petition.

"'Partisan' and 'hyperbolic' rhetoric does not," Frank wrote. "As such, an Initiative that merely implies that the tax that the Initiative seeks to eliminate is unconstitutional clearly does not involve an issue that is beyond dispute."

A final ruling won't likely happen until later this month. The court gave both the fire district and measure backers on Wednesday additional time to submit additional legal documents.

<https://www.vvdailypress.com/story/news/2022/04/07/appeals-court-reviews-thrown-out-san-bernardino-county-fire-fp-5-tax-measure/9502091002/>

Two persons die after Honda and Chevy truck collide in Fontana on April 7; suspect is arrested

By Staff Writer, FONTANA HERALD NEWS

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Two persons died as a result of a two-vehicle traffic collision in northern Fontana in the early morning hours of Thursday, April 7, and a suspect has been arrested in connection with the incident, according to the Fontana Police Department.

At 1:47 a.m., police and **San Bernardino County Fire** Department units responded to the area of Citrus Avenue and Los Cedros Avenue, said Fontana Public Information Officer Jason Delair.

Through the investigation, it was learned that an older Honda was making a left turn from northbound Citrus onto Los Cedros. The Honda turned left in front of a Chevy truck that was southbound on Citrus, police said. The Chevy struck the passenger side of the Honda, and the impact pushed the Honda into a brick wall on the southwest corner.

The two right side passengers of the Honda sustained major injuries; one was pronounced deceased at the scene and the other later died at a hospital. The driver of the Honda was found to be allegedly driving under the influence and was later booked into West Valley Detention Center on vehicular manslaughter charges, Delair said.

The Fontana Police Major Accident Investigation Team and the San Bernardino County Sheriff Coroner's Office are handling the investigation and notification of the families.

https://www.fontanaheraldnews.com/news/two-persons-die-after-honda-and-chevy-truck-collide-in-fontana-on-april-7-suspect/article_b8fc4846-b6a3-11ec-9a8f-e3381100d56c.html