

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT

CITY OF FRESNO,

Plaintiff and Respondent,

v.

FRESNO BUILDING HEALTHY
COMMUNITIES,

Defendant and Appellant,

HOWARD JARVIS TAXPAYER
ASSOCIATION,

Intervener and Respondent.

F080264

(Super. Ct. No. 19CECG00422)

**MODIFICATION OF OPINION
ON DENIAL OF REHEARING
[NO CHANGE IN JUDGMENT]**

FRESNO BUILDING HEALTHY
COMMUNITIES,

Plaintiff and Appellant,

v.

CITY OF FRESNO,

Defendant and Respondent,

HOWARD JARVIS TAXPAYER
ASSOCIATION,

Intervener and Respondent.

F080265

(Super. Ct. No. 19CECG00432)

THE COURT:

It is ordered that the opinion herein filed on December 17, 2020, be modified as follows:

1. On page 19, delete the entire paragraph that begins with the sentence “First, Elections Code section 9217 is not specific to voter initiatives.” and insert the following paragraph in its place:

The trial court places undue significance on *California Cannabis*’s reference to Elections Code section 9217 (section 9217). Section 9217 provides in relevant part: “If a majority of the voters voting on a proposed ordinance vote in its favor, the ordinance shall become a valid and binding ordinance of the city. ... No ordinance that is either proposed by initiative petition and adopted by the vote of the legislative body of the city without submission to the voters, or adopted by the voters, shall be repealed or amended except by a vote of the people, unless provision is otherwise made in the original ordinance.” Section 9217 is found under the chapter of the Elections Code governing municipal initiatives and is hence specific to initiatives, as the trial court observes. However, we disagree that the Supreme Court’s reference in *California Cannabis* to section 9217 means the two-thirds vote requirement applies to voter initiatives. There is no indication the Court in that passage was trying to formulate an interpretation of the vote requirement for a special tax measure proposed by a local governing body. Instead, the Court was explaining that if the voters desired to impose a certain procedural requirement on themselves, they would have done so expressly. Additionally, in the sentence immediately prior to the one referencing section 9217, the Court stated a two-thirds vote of the voters was required “before a *local government* can impose” a special tax; there was no reference to special taxes imposed by voter initiative.

This modification does not effect a change in the judgment.

Intervener’s petition for rehearing is denied.



SNAUFFER, J.

WE CONCUR:



FRANSON, Acting P.J.



PEÑA, J.