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CA Appellate Court Holds Charter Cities Are Bound By State Housing Objectives, Signaling Erosion of Local Discretion.

In *Anderson v. City of San Jose* (2019), the Sixth District Court of Appeal held that California's charter cities must comply with the Surplus Land Act (Govt. Code § 54220 et seq.).[1] This decision, essentially, ruled that the statewide housing crisis is of paramount importance, and that all cities – even charter cities – must yield to the state law processes governing surplus land disposition and give affordable housing preference when building on surplus city land.

This ruling sets an important precedent establishing that, where there are concerns of statewide importance, a charter city's authority to control the disposition of its own property may be superseded by state law. In light of California's ongoing housing crisis and approved legislation designed to address it, the Anderson ruling signals a tightening grip on state control over local municipal land holdings and the related policies that cities use to dispose of real estate.

In 2016, the City of San Jose enacted Policy 7-13, which identified city-specific procedures for disposal of city-owned property. Policy 7-13 was designed to make surplus land more accessible to affordable housing developers mirroring the requirements of the Act. However, pursuant to deference afforded to charter cities for matters that are considered "municipal affairs,"[2] Policy 7-13 diverged from the Act in several ways. First, Policy 7-13 exempted certain high-rise rental developments from the affordable housing restrictions in the Act for a period of 5 years. Second, it allowed a property to be sold for uses other than affordable housing with City Council approval. Third, Policy 7-13 allowed for changes to the property disposal process. Fourth, it expanded the income range for those eligible for affordable units. In addition, Policy 7-13 omitted the requirement that affordable housing restrictions be documented in recorded covenants for certain projects. As a result, it can be argued, these provisions do not provide comparable opportunities for affordable housing developments, as anticipated in the Act.

Shortly after the City enacted Policy 7-13, two residents and two housing-focused non-profit entities filed a petition for writ of mandate compelling the City to comply with the Act. The City demurred, claiming that it was exempt from the Act under the "home rule" doctrine. The trial court sustained the demurrer, noting that the Act did not apply because the City's disposal of its own property was a "municipal affair."

The Court of Appeal disagreed, noting that the Act's objective of facilitating affordable housing was a matter of statewide concern. Although there is substantial overlap between "municipal affairs" and "matters of statewide concern," the latter is distinguishable where "under the historical circumstances presented, the state has a more substantial interest in the subject than the charter city." [3]

The court found it significant that the Act's affordable housing objectives are consistent with the Legislature's declarations that (1) providing housing for Californians "is a priority of the highest order" and (2) that surplus government land should be made available for low and moderate income housing prior to disposition.[4] The court also found significant the "urgent statewide housing

needs” and potential to address them with surplus government land referenced in the 2019 amendments to the Act.

The court acknowledged that, though legislative declarations are not determinative of “matters of statewide concern,” the Legislature is entitled to deference in this regard. In addition, the court referenced recent case law and legislation further illustrating the scope of California’s housing crisis as grounds to demonstrate that the state’s interest in providing affordable housing with surplus government property is more substantial than identifiable municipal interests. For these reasons, the court held that that the City, and other charter cities, may be restricted by the Act’s affordable housing and property disposal requirements in the interest of facilitating affordable housing.

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