Court of Appeal Affirms California's Interest in Housing Can Override Laws of Charter Cities

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In *Anderson v. San Jose*, the Sixth District Court of Appeal of California held that the Surplus Land Act constitutionally applies to California's charter cities. The author of this article discusses the decision, which, by affirming a state law that directly infringes on charter cities' ability to control the disposition of their own property, sets an important precedent that can be used to defend the constitutionality of other state laws which limit charter cities' authority to deny or delay development projects that meet the state's critical housing shortage.

For decades, the California State Legislature has enacted numerous laws that limit the authority of local governments to constrain the supply and affordability of housing. These include the Housing Element Law, which requires cities to plan for their fair share of regional housing needs; the Housing Accountability Act ("HAA"), which limits cities' discretion to deny affordable and zoning-compliant development projects; and the Density Bonus Law, which requires cities to grant additional density and other modifications to qualifying affordable housing projects. In recent years as the housing crisis intensified, the Legislature amended these laws and enacted new measures including Senate Bill ("SB") 35 of 2017, which creates a streamlined ministerial approval process for qualifying housing-rich development projects.

In response, some charter cities have argued that these and other state housing laws do not apply to them. Under the California Constitution, cities governed by their own charters are exempt from complying with conflicting state laws, but only "with respect to municipal affairs."[1] The constitution does not define "municipal affairs," but it lists the conduct of city elections and employment of city officials as among the illustrative examples.[2] Numerous published opinions have held that housing, by contrast, is a statewide concern and that various state housing laws constitutionally apply to charter cities.[3] Despite these precedents, charter cities have argued that they are exempt not only from complying with newer housing laws such as SB 35 but also exempt from much older statutes including the nearly 40-year-old HAA.

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The ramifications of this debate are profound. As the Legislature found as long ago as 1990, "[t]he excessive cost of the state's housing supply is partially caused by activities and policies of many local governments that limit the approval of housing, increase the cost of land for housing, and require that high fees and exactions be paid by producers of housing."[4] However, about one-fourth of California's cities, including all of the 15 largest cities in the state, are charter cities. If the Legislature were unable to enact state laws that conflict with charter cities' local ordinances and policies, the State of California would be essentially powerless to address this critical aspect of the statewide housing crisis.

The *Anderson* Decision

In *Anderson v. San Jose*,[5] the Sixth District Court of Appeal considered the City of San Jose's claim to be exempt from complying with the Surplus Land Act ("SLA"). The SLA, enacted first in 1968 and amended numerous times in recent years, aims to address the "shortage of sites available for housing for persons and families of low and moderate income" by providing that "surplus government land, prior to disposition, should be made available for that purpose," by requiring a minimum percentage of units to be made available at specified affordability levels when surplus land is sold or leased to develop low- or moderate-income housing, or for general residential development of 10 or more units.[6] In 2016, San Jose took the position that as a charter city it was not required to comply with the SLA, and the city adopted policies for the disposition of city property which did not comply with requirements of state law. After low-income households and housing advocates sued, a Santa Clara County Superior Court judge agreed with San Jose.[7]

The Sixth District Court of Appeal reversed that decision, holding that "while a city's process for disposing of surplus city-owned land is typically a municipal affair, San Jose's policy here must yield to the state law."[8] The court applied the Supreme Court of California's four-element inquiry to determine whether state law constitutionally overrides the local law of a charter city:

(1) To consider whether the city's local law or policy relates to a municipal affair;

(2) To consider whether state law conflicts with the city policy;

(3) To consider whether the state law relates to a statewide interest; and

(4) To consider whether the state law is reasonably related to resolution of the statewide concern and narrowly tailored to avoid unnecessary interference in local governance. If "the subject of the state statute is one of statewide concern and . . . the statute is reasonably related to its resolution, then the conflicting charter city measure ceases to be a 'municipal affair' *pro tanto* . . ."[9]

The parties did not dispute, and the Sixth District Court of Appeal concluded, that the first two elements were met, and so the court proceeded to determine whether the state had the authority to "advance[] state land use policy objectives," and specifically "to address shortage of sites available for low- and moderate-income housing in California."[10] The court concluded that this was clearly a matter of statewide concern. In so doing, it distin-

guished the California Supreme Court precedents on which San Jose relied, because these opinions recognized only that charter cities had exclusive authority over the expenditure of their own public funds and over the ability to license taxes on businesses within their jurisdiction.[11] In contrast, the Sixth District Court of Appeal noted that numerous published opinions "have recognized the statewide dimension of the affordable housing shortage . . ."[12] The court emphasized that "the regional spillover effects of insufficient housing demonstrate 'extramunicipal concerns' justifying statewide application of the Act's affordable housing priorities."[13]

Finally, the court concluded that the SLA was "sufficiently tailored to its purpose."[14] In conducting this analysis, the court did not put the state to the burden of proving that its law was the least restrictive means that could possibly be imagined to accomplish the statewide purpose. Instead, the court cited other recent Court of Appeal authority for the proposition that to survive constitutional scrutiny, a state law need only "be reasonably related to the issue at hand and limit the incursion into a city's municipal interest."[15] Here, the court held that the SLA primarily imposed "generally applicable procedural standards" that "impinge[] less on local autonomy than . . . substantive obligations."[16] As the court noted, "[w]hether land is deemed 'surplus' is entirely within the local government's discretion," and the SLA only imposes requirements upon those lands which the city has chosen to designate.[17] The court recognized that the SLA also imposes substantive obligations, but concluded that while "the substantive measures are significant in their narrow spheres," they "do not dominate the generally applicable procedural standards" and further noted that many other "substantive" requirements have been upheld as validly applicable to charter cities.[18] Accordingly, the SLA constitutionally supersedes contradictory local laws adopted by charter cities.

Conclusion and Takeaways

The *Anderson* decision only directly addresses the constitutionality of the SLA, and it is possible that other state laws could be assessed differently. However, the opinion provides strong support for the constitutionality of many other state housing laws for several reasons, including:

- The SLA deprives charter cities of authority over a core municipal power: the power to decide how they will dispose of *their own property.* Nonetheless, the SLA was held constitutional in light of the statewide interest in affordable housing. Other housing laws, which do not affect local control over municipal property but merely limit local police power authority over private property, should stand on even stronger constitutional footing.

- By emphasizing that state laws are "sufficiently tailored" if they merely impose procedural obligations, the opinion provides strong constitutional support for laws that limit the ability of local governments to impose excessive procedural roadblocks to housing approvals. Just as the SLA leaves the ultimate decision about whether to designate land as surplus to the city, laws such as the HAA and SB 35 leave to cities the ultimate decision about where housing is to be permitted and at what scale. These laws merely impose procedural limitations on

cities' ability to deny or delay development projects that comply with the zoning rules the cities have put in place.

- At the same time, the opinion also recognized that state laws can still constitutionally apply even if they *do* impose appreciable substantive requirements on local governments, which provides useful defense to the constitutionality of laws such as the Housing Element Law and the Density Bonus Law.

  The court's emphasis on the "spillover effects" of constrained housing supply is a welcome understanding of the need for statewide housing policy. Indeed, housing policy is the classic example of a collective action problem: many local jurisdictions would prefer, if permitted, to shift the burden onto others to meet the statewide need for more affordable housing. However, as the *Anderson* court recognized, the Constitution does not prohibit the State of California from stepping in to ensure that each locality contribute its fair share.

NOTES:

[1]Cal. Const., Art. XI, § 5(a).

[2]Cal. Const., Art. XI, § 5(b).

[3]*See, e.g., Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.*, 175 Cal. App. 3d 289, 306, 220 Cal. Rptr. 732 (4th Dist. 1985) (holding there was "no merit" to the argument that charter city was exempt from complying with provision in state Housing Element Law); *Bruce v. City of Alameda*, 166 Cal. App. 3d 18, 22, 212 Cal. Rptr. 304 (1st Dist. 1985) (charter city must comply with state housing discrimination law because "locally unrestricted development of low cost housing is a matter of vital state concern"); *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451, 458, 105 Cal. Rptr. 2d 802 (2d Dist. 2001), as modified on denial of reh'g, (Apr. 11, 2001) (charter city must comply with state accessory dwelling unit law).

[4]Gov. Code § 65589.5(a)(1)(B).

[5] https://www.courts.ca.gov/opinions/documents/H045271.PDF.

[6]Gov. Code §§ 54221, 54222.5, 54233.

[7]The SLA has been subsequently amended by legislation that took effect in January 2020. The *Anderson* decision addressed the city's conflicts with the law as was in effect at the time of the City of San Jose's actions in 2016, but the Court of Appeal did find the recent amendments "relevant to our consideration of the legislative perspective on a matter of statewide concern." *Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020).

[8]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 658–59, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020).

[9]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 663, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020) (quoting *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal. 3d 1, 17, 283 Cal. Rptr. 569, 812 P.2d 916 (1991)).

[10]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 672, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020).

[11]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 670, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020) (citing *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal. 3d 1, 8-10, 21-23, 283 Cal. Rptr. 569, 812 P.2d 916 (1991)) and *State Building & Construction Trades Council of California v. City of Vista*, 54 Cal. 4th 547, 561-62, 143 Cal. Rptr. 3d 529, 279 P.3d 1022, 19 Wage & Hour Cas. 2d (BNA) 395 (2012).

[12]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 672, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020) (citing, e.g., *Green v. Superior Court*, 10 Cal. 3d 616, 625, 111 Cal. Rptr. 704, 517 P.2d 1168 (1974); *Buena Vista Gardens Apartments Assn. v. City of San Diego Planning Dept.*, 175 Cal. App. 3d 289, 306, 220 Cal. Rptr. 732 (4th Dist. 1985); *Bruce v. City of Alameda*, 166 Cal. App. 3d 18, 22, 212 Cal. Rptr. 304 (1st Dist. 1985); *Coalition Advocating Legal Housing Options v. City of Santa Monica*, 88 Cal. App. 4th 451, 458, 105 Cal. Rptr. 2d 802 (2d Dist. 2001), as modified on denial of reh'g, (Apr. 11, 2001)).

[13]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 673, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020) (quoting *California Fed. Savings & Loan Assn. v. City of Los Angeles*, 54 Cal. 3d 1, 18, 283 Cal. Rptr. 569, 812 P.2d 916 (1991)).

[14]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 678, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020).

[15]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 678, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review

denied (Mar. 11, 2020) (quoting *Lippman v. City of Oakland*, 19 Cal. App. 5th 750, 765, 229 Cal. Rptr. 3d 206 (1st Dist. 2017), review denied, (Apr. 11, 2018)).

[16]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 666, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020) (quoting *State Building & Construction Trades Council of California v. City of Vista*, 54 Cal. 4th 547, 564, 143 Cal. Rptr. 3d 529, 279 P.3d 1022, 19 Wage & Hour Cas. 2d (BNA) 395 (2012)).

[17]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 676, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020).

[18]*Anderson v. City of San Jose*, 42 Cal. App. 5th 683, 675–78, 255 Cal. Rptr. 3d 654 (6th Dist. 2019), review denied (Mar. 11, 2020).