

California Supreme Court To Hear San Jose Affordable Housing Case.

The California Supreme Court has granted a petition by the California Building Industry Association for review of an appellate court's decision upholding a San Jose affordable housing ordinance. The court of appeal found the ordinance to be a valid exercise of the City's police powers, reversing a lower court ruling that the city had not shown a reasonable relationship between the impact of new development and the need for affordable housing. [California Building Industry Association v. City of San José](#), No. H038563 (June 6, 2013).

The challenged ordinance required developments with 20 or more units to make 15% of their units affordable to very low, low and moderate income buyers or pay an in-lieu fee of \$122,000 per unit. The CBIA contended that the affordable housing requirement was an exaction, and that the city had failed to show a reasonable relationship between the new development and the need for affordable housing, an argument the trial court accepted.

The appellate court reversed, finding that the affordable housing requirement was not an exaction, but rather simply an exercise of the City's police powers. As a result, the court held, CBIA had the burden of showing that the ordinance did not bear a reasonable relationship to the public welfare, and ordered the trial court to reexamine the case. In its petition for review, CBIA contended that the court of appeal's decision conflicted with an earlier appellate decision evaluating a similar measure as an exaction rather than as a police power enactment. It also contended the decision was undermined by the U.S. Supreme Court's decision in [Koontz v. St. Johns River Water Management District](#), No. 11-1447 (U.S. S. Ct., June 25, 2013), which determined that in-lieu development fees were "functionally equivalent to other types of land use exactions." The California Supreme Court is expected to hear the case sometime next year.

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