

## Federal Court Invalidates San Francisco Tenant Relocation Requirements

The Northern District of California has struck down part of San Francisco's rent control ordinance as an unconstitutional taking under the Fifth Amendment in [Levin v. City and County of San Francisco, Dist. Court, ND California 2014](#), No. 3:14-cv-03352-CRB (N.D. Ca Oct 21, 2014). The case may have important implications for monetary exactions in local land use permitting.

At issue in *Levin* were the relocation payments required by the 2014 amendments to the San Francisco rent control ordinance. Under the ordinance, owners of rent-controlled property were required to make certain payments for tenants evicted under the Ellis Act. Under the 2014 amendments to the rent ordinance, in order to withdraw the unit under the Ellis Act, property owners were required to pay the greater of the lump sum required under the original ordinance or an amount equal to twenty-four times the difference between the unit's current monthly rate and the fair market value of a comparable unit in San Francisco.

Plaintiffs, owners of rent-controlled properties in San Francisco, filed suit, bringing a facial challenge against the 2014 ordinance as violating the Takings Clause of the Fifth Amendment.

The court ruled in favor of the plaintiffs, finding that the 2014 ordinance constituted an exaction that violated the Takings Clause. The court first held that the San Francisco ordinance, which demanded monetary payment from the property owners in exchange for a permit to remove a unit from the rental market, had to satisfy the *Nollan/Dolan* requirements of essential nexus and rough proportionality. Next, the court found that the ordinance could not meet either of those requirements. Both steps in the court's analysis may prove important in future cases involving monetary exactions.

### Extending the reach of *Nollan/Dolan*

The *Nollan/Dolan* standard constitutes a special application of the unconstitutional conditions doctrine to the government's land use permitting power. The *Nollan* and *Dolan* cases specifically applied to adjudicative land use exactions involving a government demand for property owners to dedicate an easement as a condition of obtaining a development permit. The central concern in these two cases was that the government may use its substantial power in land use permitting to pursue governmental ends that lack an essential nexus and rough proportionality to the effects of the proposed new use of the property.

The Supreme Court's 2013 decision in *Koontz v. St. Johns River Water Management District* expanded the reach of *Nollan* and *Dolan* to monetary exactions. Because of the direct link between the government's demand and a specific piece of real property, the Court held that the central concern in *Nollan* and *Dolan* was implicated and application of the standard to monetary exactions was appropriate.

*Levin* followed the *Koontz* logic in applying *Nollan* and *Dolan* to San Francisco's rent ordinance. In applying, *Koontz*, it made several significant holdings:

- *Levin* held that applying the *Nollan/Dolan* standard to the demand for relocation payments was appropriate because the demand for payments operated upon an identified property interest by directing the owner of a particular piece of property to make a monetary payment. Thus, even though the rent ordinance did not impose a deed restriction, a covenant, or even a lien on the property, the *Nollan/Dolan* standard still applied because the fees demanded were directed at a particular piece of property.
- Prior to *Koontz*, Ninth Circuit precedent held that the *Nollan/Dolan* standard was limited to *ad hoc* or adjudicatory exactions and did not apply to legislatively imposed exactions. *Levin* interpreted *Koontz* as removing the legislative/adjudicative decision and held that the rent ordinance relocation payments, despite being legislatively imposed, were nevertheless subject to the requirements of *Nollan/Dolan*.
- Prior to *Koontz*, it was thought that the *Nollan/Dolan* standard did not apply to facial takings claims. *Levin* read *Koontz* as abrogating this precedent in finding the rent ordinance unconstitutional on its face.

## Applying the *Nollan/Dolan* standard

*Levin* also provides an important discussion of the necessary relationship between the impact of the permitted action and the fee demanded under *Nollan/Dolan*. The court stressed that mere "but-for" causation is insufficient to satisfy the requirements of essential nexus and rough proportionality. The city argued that the relocation payment was justified because the property owner's withdrawal of a unit from the housing market "causes" the evicted tenant to be exposed to market rents. This justification, however, was not sufficient to meet the requirements of *Nollan/Dolan*. While an eviction arguably results in certain costs such as relocation costs, it does not cause the gap in affordability that the property owners were forced to pay under the 2014 ordinance. Thus, the court concluded, the monetary exaction demanded neither shared an essential nexus with nor was roughly proportional to the impact of the withdrawal of the rental unit.

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