

## Charter Cities Must Adhere to Affordable Housing Requirements of the Surplus Lands Act

The statewide concerns underlying the affordable housing provisions of the Surplus Lands Act superseded municipal home rule authority on the same subject and hence required charter cities to comply with the affordable housing provisions of the Act. *Anderson v. City of San José*, 42 Cal.App.5th 683 (2019). This case addressed whether state constitutional authority granting charter cities plenary power over their municipal affairs



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City of San José, relying on its plenary power over municipal affairs, adopted measures that differed substantially from those in the Act, including a five-year exemption from affordable housing restrictions for certain high-rise rental developments and authority for the City manager to modify the process for disposing of surplus property "to accommodate circumstances applicable to significant or unusual properties." It also omitted the Act's requirement that certain affordable housing restrictions be recorded in a covenant at the time the surplus land was sold. The appellate court applied an established analytical framework to resolve whether the Act preempted the City's local regulations. It determined that sale of a charter city's surplus property was inherently a municipal affair and that the City's regulations facially conflicted with the Act. It also concluded that the Act

addressed a matter of statewide concern — the provision of suitable housing for all Californians and the chronic shortage of sites available to provide that housing. The key question was thus whether the Act was "reasonably related to the resolution of the identified statewide concern and narrowly tailored to avoid unnecessary interference in local government." The court answered the question in the affirmative. It found that the Act's mandate to prioritize surplus land for affordable housing and adhere to specified affordability levels when the land was developed for housing were reasonably related to the state's interest in reducing the shortage of available affordable housing sites. It was also appropriately tailored to avoid undue interference in local governance since it left the determination of whether land was surplus entirely within the local government's discretion and only imposed disposition requirements upon lands the city chose to designate as surplus. The court also determined that the need for preemption was evident because "[a]s much as [a] city has a readily identifiable interest in the disposition of its real property, the well-documented shortage of sites for low- and moderate-income housing demonstrate 'extramunicipal concerns' justifying statewide application of the...[Act's] affordable housing priorities."

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