



The Court of Appeal held that a city-developer agreement that ostensibly precluded the City of Oakland from imposing any new impact fees on the project constituted an impermissible infringement of the City's police power. *Discovery Builders Inc v City of Oakland*, 92 Cal. App. 5th 799 (2023).

In 2004, the City approved a development with over 400 residential units (primarily townhomes and condominiums) on the site of the former Leona Quarry. In 2005, the City entered into cost-allocation agreement with the developer to fund the full costs incurred by the City in hiring and supervising independent technical and other consultants needed for the project. The agreement provided that payment of the fees specified in the

agreement "is agreed by the Parties to fully satisfy and discharge Developer's obligations for" City fees. "City fees" was not defined in the agreement, which was signed on behalf of the City by the planning director.

In 2016, the City adopted three new impact fees for development projects – an affordable housing impact fee, a transportation impact fee, and a capital improvements impact fee to fund a variety of improvements, including library, parks and recreation, police, and storm drain utilities. The developer protested the imposition of these fees on its project and filed suit contending that the 2005 agreement barred the City from collecting any fees other than those described in the agreement.

The court noted the conflicting views of the parties as to which fees were intended to be covered by the agreement but concluded that this issue need not be resolved. Relying on *Avco Community Developers, Inc. v. South Coast Regional Commission*, 17 Cal.3d 785 (1976) and its progeny, the court held that enforcement of the agreement as interpreted by the developer would be contrary to public policy because it was "settled that the government may not contract away its right to exercise the police power in the future." There was no dispute that the City's affordable housing, transportation, and capital improvement fee ordinances arose from the City's police powers; hence, the 2005 agreement could not be enforced in a way that would prevent the City from applying those ordinances to the project. The court rejected the developer's argument that there was no surrender of police powers because the City still maintained the power to make and enforce future zoning laws against other developers, citing prior caselaw invalidating agreements exempting a small subset of parties from laws and ordinances.

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