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Council Resolution Approving an Amendment to a Disposition and Development Agreement Was Subject to Referendum



The court of appeal held that a City Council resolution approving a development agreement that included policy decisions regarding development of a public park was a legislative act subject to referendum.

Move Eden Housing v. City of Livermore, 100 Cal. App. 5th 263 (2024).

In 2018, the City of Livermore and Eden Housing entered into a Disposition and Development and Loan Agreement for development of a below-market rate housing project to be developed on land acquired by the City's former Redevelopment Agency. The City approved entitlements for the project in 2021. Opponents filed a CEQA and Planning and Zoning Law challenge against the project and had their petition denied.

In 2022, the City Council adopted a resolution approving an Amended and Restated Disposition, Development, and Loan Agreement between the City and Eden. The Amended and Restated DDA provided for the City to make a loan to Eden for the cost acquiring the City property and reflected the City's decision to spend \$5.5 million on constructing and improving a public park (called Veteran's Park) as part of the project.

Within 30 days of approval of the City Council resolution approving the Amended and Restated DDA, project opponents gathered signatures and submitted a petition for a referendum of the decision. The City Clerk confirmed that the referendum petition contained the required number of signatures but declined to process the petition on the ground that the resolution adopting the Amended and Restated DDA was an administrative act, not a legislative one, and therefore not subject to referendum.

The Court of Appeal noted that the standard for preelection review of a referendum's validity is "one of great deference where a court will remove the initiative [or referendum] from the ballot only "on a compelling showing that proper case has been established for interfering." An election official "may not 'refuse to submit an initiative [or referendum] measure to the electorate on the ground that it deals with a matter not subject to the

initiative [or referendum]."

In this case, the elections official determined that the number of signatures, prima facie, equaled or exceeded the number required. In these circumstances, the law directs that the clerk shall accept the petition for filing and shall examine it and certify the results pursuant to statute procedures.

The Court of Appeal went on to address the merits of whether the referended resolution was a legislative or administrative act. Legislative acts are those "which declare a public purpose and make provisions for the ways and means of its accomplishment. Administrative acts, on the other hand, are those which are necessary to carry out the legislative policies and purposes already declared by the legislative body."

The 2022 Amended and Restated DDA, for the first time, made the policy decision to fund the construction and improvement of Veteran's Park. The court acknowledged several other cases where a municipality's decision to sell land to a private party has been considered administrative and not subject to referendum. The court distinguished those cases, noting that in the present case, the City was not merely disposing of land, but instead making a determination about a sizable public expenditure to develop a public park.

Authors

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