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California Land Use & Development Law Report

ACLU Files Brief in Support of Building Industry Association

It's not every day that the American Civil Liberties Union and the Building Industry Association find themselves on the same side of an appellate case. But it can happen, as shown by an amicus curiae brief the ACLU filed today in support of an attorneys fees award to BIA for its successful challenge to a city ordinance. The case, currently pending in the first appellate district, involves a challenge to a City of Santa Rosa ordinance that requires residential developers to vote for Mello-Roos taxes on units within their projects as a condition of development approval. The trial court invalidated the ordinance, ruling it violates the constitutional right to vote freely in an election. The court also awarded BIA over \$250,000 in attorney's fees, finding that the suit had vindicated important rights and provided a substantial public benefit. The city appealed the attorney fee award. One of its arguments is that attorney's fees should not have been awarded, or should have been reduced, because the city is in dire financial straits and the cost would ultimately be borne by taxpayers. The [ACLU's brief](#) responds to both arguments. It observes that the city's position conflicts with one of the fundamental purposes of the private attorney general doctrine, which is to promote public interest litigation *against public entities*. Barring or reducing such awards based on financial considerations, the ACLU argues, would undermine exactly to sort of public interest litigation seeking government accountability the statute was intended to promote. The case is shaping up as a major battle on the issue of attorney fee awards against public agencies. The League of California Cities and the California State Association of Counties have weighed in with an amicus brief supporting the city's position. [Building Industry Association of Northern California v. City of Santa Rosa](#) (First District Court of Appeal, Case No. A132839).

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