

# CLIENT NEWS BRIEF

## Charter Cities Bound By More General Law

December 2019  
Number 84

A recent ruling of the Sixth District Court of Appeal found that a charter city, the City of San Jose, must abide by the California Surplus Land Act. In *Anderson v. City of San Jose* (November 26, 2019, H045271) \_\_ Cal.App.5th \_\_, the court's ruling focused on the Act's provisions requiring that local agencies offer surplus property for subsidized housing affordable to low and moderate-income residents. The City of San Jose argued that its status as a charter city and its "home rule" power allowed the city to determine the best policy for land use within its boundaries. The Court of Appeal rejected this argument and stated that the shortage of affordable housing was a matter of statewide concern, which justifies application of general law regardless of San Jose's status as a charter city.

### Background

The Surplus Land Act requires local agencies to first offer surplus land to a developer for the purposes of a residential project where 25 percent of the units will be affordable housing for at least 55 years. If no such deal can be reached, the local agency may list the land on the open market with the condition that if the land is used to build 10 or more homes, at least 15 percent of those units must be affordable.

The California Constitution defines general law cities and charter cities, and authorizes them to: (1) make and enforce all local laws and regulations not in conflict with general state laws (Cal. Const., art. XI, § 7); (2) establish, purchase, and operate public works and utilities or franchise others to do so (Cal. Const., art. XI, § 9); and (3) be free from state legislation delegating to a private person or body control over city property, funds, tax levies and municipal functions (Cal. Const., art. XI, § 11). Cities with voter-approved charters have additional "home rule" authority or supremacy over their municipal affairs, police, subgovernments, city elections, and their elected and appointed city officials and employees (Cal. Const., art. XI, § 5). However, as to matters of statewide concern, charter cities remain subject to state law. (*Bishop v. City of San Jose* (1969) 1 Cal.3d 61.) The designation of matters of statewide concern is elastic and often reflects the current times and policies of the state.

### **Anderson v. City of San Jose**

In addressing the City of San Jose's argument in this case, the appellate court's analysis centered on the application of the test set out in *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1. According to the appellate court, the key elements of the test at issue here are "whether the disposal of locally owned surplus property for affordable housing purposes is a matter of statewide concern. If so, we consider whether the provisions of the Act are reasonably related to resolution of that concern and narrowly tailored to avoid unnecessary interference in local governance." The court ultimately opined that, "[b]y requiring municipalities to prioritize surplus land for the development of low- and moderate-income housing, the statute addresses the shortage of sites available for affordable housing development as a matter of statewide concern. Because the statute also narrowly tailors the restrictions on



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local government to avoid unnecessary interference in the locality's affairs, it meets the test for statewide preemption."

## Takeaways

In ruling that the disposal of surplus land by a charter city is a matter for statewide concern, the Sixth District Court of Appeal offered a new strategy to those looking to challenge the "home rule" and the discretion afforded to charter cities in deciding matters of public policy under their purview. The success of the appellant's arguments in this case may have a ripple effect far beyond the application of the Surplus Land Act. This ruling may encourage challenges of other charter cities' application of their "home rule" in other contexts.

For more information about this ruling, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcast](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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