

# CLIENT NEWS BRIEF

## Court Rejects Developer-Sponsored Initiatives

A California appellate court has ruled that development agreements may not be approved through voter initiatives. Development agreements are contracts between a local agency and a property owner or developer.

In *Center for Community Action and Environmental Justice v. City of Moreno Valley et al.*, the California Court of Appeal for the Fourth Appellate District held that it was the Legislature's intent to exclusively delegate approval of development agreements to local legislative bodies and that such approval is subject to voter referendum, but not voter initiative.

### Background

In August 2015, the Moreno Valley City Council adopted an ordinance approving a development agreement for the development of the World Logistics Center project, which was proposed by Highland Fairview. Environmental groups sued, alleging the project failed to comply with the California Environmental Quality Act (CEQA). The developer, Highland Fairview, subsequently backed and supported the filing with the city of an initiative petition that would repeal the ordinance approving the development agreement and approve substantially the same development agreement. Once the initiative qualified for the ballot, the city council had the option of adopting the initiative without change, or submitting it to the voters for approval. The city council chose to adopt the initiative, instead of submitting it to the voters. In these instances, cities are powerless and cannot reject an initiative or require alterations to a project.

The environmental groups challenged the city council's adoption of the initiative, contending that the adoption of a development agreement by an initiative violated the development agreement statute (Gov. Code, § 65864, et seq.) and article II, section 12 of the California Constitution. The trial court denied the groups' petitions. The Court of Appeal reversed, directing the trial court to issue a writ of mandate instructing the city council to set aside its adoption of the initiative.

In reviewing the legislative history and the express statutory language of the development agreement statute, the Court of Appeal concluded there was clear evidence that the Legislature intended to exclusively delegate approval of development agreements to governing bodies and to preclude their adoption by initiative. According to the court, as a negotiated contract between a developer and a municipality, a development agreement was incompatible with the initiative process, in which the measure is proposed by the voters and, if approved, cannot be changed.

### Takeaways

The *City of Moreno Valley* decision offers important judicial guidance on the longstanding practice of developers using the initiative process to circumvent the traditional local legislative process. Because voter initiatives can only be

October 2018  
Number 61



William P. Curley III  
Partner and Co-Chair  
Local Government Practice Group  
Los Angeles Office  
[wcurley@lozanosmith.com](mailto:wcurley@lozanosmith.com)



Jose Montoya  
Associate  
Los Angeles Office  
[jmontoya@lozanosmith.com](mailto:jmontoya@lozanosmith.com)



*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*

# CLIENT NEWS BRIEF

October 2018  
Number 61

revised by another vote of the people, initiatives developed and sponsored by developers significantly impede a city council's ability to regulate a project. The development agreement statute contemplates negotiation between a local government and developer. An initiative, on the other hand, cannot be changed before adoption, making it impossible for the city council to secure assurances from the developer and benefits for local residents.

Since the California Supreme Court's 2014 decision in *Tuolumne Jobs & Small Business Alliance v. Superior Court*, which held that that an initiative is not subject to the California Environmental Quality Act, California cities and counties have seen a dramatic increase in development projects proposed by developer sponsored initiatives. At least for the moment, the *City of Moreno Valley* decision will put an end to this practice and restore negotiation power over development projects to local governments.

For more information about the *City of Moreno Valley* decision or about development agreements in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

*As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.*