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California Land Use & Development Law Report

Building Industry Challenges Public Art Requirements

The Building Industry Association of the Bay Area has filed a lawsuit in federal court in the Northern District of California challenging the City of Oakland's recent adoption of a public art ordinance on constitutional grounds. The challenged [Ordinance](#) requires developers to install art works (worth at least 1/2% of the total cost of residential projects or 1% of commercial projects) as part of their developments using artists approved by the City. Builders may opt out of the public art requirement only if they pay an in-lieu fee to the City to be used to fund installation of publicly owned art on City property. BIA's [complaint](#) in the case contends that the Ordinance's requirements violate the Fifth Amendment by imposing exactions that do not have a sufficient nexus to an identifiable adverse impact of development, and thereby amount to unconstitutional conditions. The lawsuit also claims that the Ordinance's requirement that developers install art works as part of their projects, and that such art be approved by the City, violates their rights to free expression under the First Amendment. BIA seeks an injunction preventing implementation of the Ordinance.

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