

## Santa Rosa development tax ruled invalid

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A special property tax passed by Santa Rosa is unconstitutional because it forces property owners to give up their voting rights in exchange for the right to subdivide their property, a judge ruled today.

Judge Mark Tansil sided with the Homebuilders Association of Northern California in its suit seeking to overturn the 2008 tax surcharge on most new home construction in Santa Rosa.

The city argued the ordinance is legal under the state's 1982 Mello-Roos Act, which allows cities to collect taxes from those placing additional demands on services by new construction.

But Tansil agreed with the home builders that it was unfair for the city to require property owners to vote in favor of annexation into a special taxing district in order to get approval to construct new homes.

"City officials were trying to arm-twist property owners into accepting new taxes without a vote, and the judge has called them on it," said Paul Beard, the Pacific Legal Foundation attorney representing the home builders. "All property owners, all taxpayers, all voters, can claim a victory today."

City Attorney Caroline Fowler said she disagreed with Tansil's interpretation and will recommend to the city council that it appeal his ruling.

"I think the judge is wrong," she said.

The city passed ordinance 3902 in late 2008 at a time when plummeting revenues was forcing it to slash millions from its budget.

The idea for the tax arose after environmental impact reports for several large development proposals concluded that the projects would not generate enough property tax revenue to pay for city services, particularly police and fire protection.

The city created a special taxing district over the entire city, and then required certain property owners to vote in favor of annexation into the district in order to get development approvals.

The law applies only to property owners seeking to intensify the land use of their property, such as proposing a 20-home subdivision on pastureland. Owners of lots where development rights already exist are not impacted, Fowler explained.

The annual surcharge is passed on to future home buyers, initially set at \$430 for new homes and \$310 for units in multifamily buildings.

The Mello-Roos Act allows so-called community facilities districts to be formed with a two-thirds vote of affected property owners. But the city chose a mechanism that allows such districts to be formed without an election, and then required property owners to agree to be annexed into the special taxing district as a condition of project approval.

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Tansil found that that city's ordinance "unfairly tampers with the elective process" because it was a "legislative effort to induce certain property owners to cast a vote in favor of the government's position on the subject of special taxation."

The decision was not a surprise. Tansil had issued three tentative rulings in the matter, all indicating his inclination to side with the home builders.

The impact of the ruling is unclear. In 2008, then city manager Jeff Kolin, aware of opposition to the ordinance, said the money raised from the tax would be set aside in a separate fund in the event the city were forced to reimburse homeowners who've been paying it.

Chief Financial Officer Bruce McConnell said he doesn't know how much has been set aside, but doubts it'll be much given the collapse of the real estate market.

Fowler said it's premature to discuss other options the city has to raise revenue needed to offset the cost of additional services.

If the city wants to impose a development fee on new home construction, it first needs to be able to demonstrate that there is a "nexus" between that new fee and the alleged impact of the development on public services, Beard said.

It should do so on a case-by-case basis, not a blanket law that assumes all developments have the same impacts, he said.