

San Jose: Lawsuit challenges city housing policy

The Mercury News, by Ramona Giwargis, Posted: 07/22/2016, 04:24:22 AM PDT

SAN JOSE -- Two struggling renters and a pair of advocacy groups joined in filing a lawsuit Thursday against San Jose claiming a recent city land-use policy violates a state affordable-housing law.

The lawsuit was filed in Santa Clara County Superior Court on behalf of Urban Habitat, Housing California and two city residents, Sarah Anderson and Joana Cruz, both mothers who are struggling to afford housing in the city's soaring rental market.

The lawsuit alleges that a city policy adopted in April violates California's Surplus Land Act, which requires cities to prioritize public land for affordable housing that they sell or lease.

"The outcome of San Jose's illegal policy is it will predictably cause a reduction in the availability of affordable housing throughout San Jose," said Cristina Pena, an attorney with Bay Area Legal Aid, one of several law organizations representing the plaintiffs.

The City Council adopted the policy allowing San Jose a handful of exceptions from building affordable housing on city-owned land, including downtown properties that may be used for high-rise development for the next five years.

The policy also allows city leaders to make an exception for public land that can be used for economic development purposes. For example, if a manufacturing firm wants to buy a publicly-owned site to build its new headquarters, San Jose can sell the parcel and won't need to prioritize it for affordable housing.

City Attorney Rick Doyle says San Jose is exempt from following the state law because as a charter city, San Jose can set its own rules when it comes to selling public land.

"State law doesn't apply to charter cities," Doyle said Thursday. "Anything with respect to city money or property in a charter city is within our purview. This is the city's business." Pena, however, argued that the Surplus Land Act applies to charter cities as well.

"The law says the city needs to prioritize affordable housing on these surplus lands, and it doesn't allow local entities to craft their own exceptions," she said.

The lawsuit claims San Jose's policy will reduce the availability and sites for affordable housing, disproportionately impacting "certain racial and ethnic groups, individuals with disabilities, women, and families with children."

"The city enacted its illegal policy even as San Jose, like all of California, faces an extraordinary housing crisis -- there are too few homes available for low-income residents," the complaint said.

Doyle said San Jose has led the way with its landmark housing policies, including a law it defended to the U.S. Supreme Court that requires developers to set aside a certain number of units for affordable housing on new projects. It also adopted a \$17 per-square-foot fee on new rental developments -- to build housing for the poor -- though that policy also excludes downtown high-rises.

"I would challenge any city in this state that they've even done a fraction of what we've done," Doyle said.

The claim says Anderson, a veteran with two kids, was living on San Jose streets after escaping domestic violence last year. She now lives in an "overcrowded apartment" and uses more than half her income for rent. Cruz also lives in a small apartment with four others after her rent was raised \$700 per month.

The plaintiffs are asking a judge to order the city to nullify its policy and take steps to comply with the Surplus Land Act.

Contact Ramona Giwargis at 408-920-5705. Follow her at [Twitter.com/ramonagiwargis](https://twitter.com/ramonagiwargis).