Ehrlich Resurrected: Public Art Ordinances Once Again Under Attack

In 1996, in *Ehrlich v. City of Culver City*, the California Supreme Court rejected a takings challenge to Culver City's "public art" ordinance, requiring that developers spend a specified and modest percentage of a project's construction costs on art that is to be accessible at the project to the public. In so doing, the Court rejected the argument that such a challenge was subject to "heightened scrutiny" under the Supreme Court's Nollan and Dolan decisions. California cities have relied on Ehrlich ever since, and today many cities have adopted similar ordinances. 22 years later, the Building Industry Association (Bay Area) has brought a new challenge to the City of Oakland's newly-enacted public art ordinance. BIA resurrects the Nollan/Dolan challenge, arguing that the issue is again in play post-Koontz and Lingle. In addition, BIA argues that such ordinances constitute "compelled speech" in violation of the First Amendment. The District Court rejected BIA's claims (Building Industry Association-Bay Area v. City of Oakland, 289 F.Supp.3d 1056 (N.D. Cal. 2018)), and upheld the ordinance, and BIA has appealed to the Ninth Circuit. This session will address the applicable takings and First Amendment legal issues that could have widespread implications for all California cities.

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