

Recent Recusal Cases Reveal Pitfalls for Land Use Practitioners

Key Points

- City council and planning commission recusals can have a significant impact on the outcome of hearings involving land use and environmental issues.
- Recusals can lead to tie votes or the loss of a quorum, which may make it impossible for local governments to approve development projects.
- In some circumstances, an elected or appointed official's failure to recuse can be grounds for reversing local government decisions.

Recent cases involving local government recusals underscore the need for practitioners to consider the implications of these recusals in hearings regarding land use and environmental issues. In one noteworthy example, a court overturned a Sacramento City Council decision to deny a conditional use permit for a gas station because one councilmember failed to act as an impartial decisionmaker and should have been recused ([*Petrovich Development Company, LLC v. City of Sacramento*](#); Cal. Ct. of App., No. C087283). The Court of Appeal found that the councilmember “took affirmative steps to assist opponents of the gas station” by preparing talking points for opponents and “organizing the presentation at the hearing to obtain a ‘no’ vote on the gas station.” For these reasons, the court concluded that the councilmember should have been recused from the hearing, and the councilmember’s participation ultimately necessitated overturning the city council’s decision.

In some circumstances, recusals may deprive a city council or planning commission of a sufficient number of votes to approve a project. That outcome nearly occurred earlier this month when three Davis, California planning commissioners [recused themselves from a hearing on a transitional housing and homeless services facility because they had donated money to the project](#). A bare majority of commissioners approved the project by a 4-0 vote, but if only three commissioners were available, the planning commission would have lacked a quorum and would not have been able to approve the project. Sometimes, recusals can also prevent local governments from reaching required vote thresholds even when a quorum is still present. In one recent Court of Appeal decision, the court held



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that a city council's 4-1 vote failed to meet a mandatory threshold of five affirmative votes when one seat was vacant and one councilmember was recused ([Lateef v. City of Madera](#); Cal. Ct. of App., No. F076227).

Recusals can also lead to tie votes. For example, in a recent Fort Collins, Colorado city council hearing, the council [deadlocked 3-3 when deciding whether to re-zone the site of a former sports stadium](#). In that case, Fort Collins' Mayor Pro-tem recused herself after an ethics complaint was filed against her.

For more information about the impacts of potential conflicts of interest or recusals in land use and environmental cases, please contact Hanson Bridgett LLP's [land use](#) or [government](#) practice groups.

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