

Here at Legal Planet we've been paying [a lot of attention to how CEQA affects land-use decisions](#). So [has the legislature](#). And that's fair enough. CEQA is important. And CEQA may well be deterring an important range of urban infill development that is environmentally important.

But it's not the only thing that affects urban infill development, as Ethan points out in this [post](#). Also important – perhaps more important – are the initiative and referendum powers. These powers allow citizens in the California to put (almost any!) state or local issue on the ballot to be decided by the voters – including overriding legislative decisions.

You may reasonably wonder what this has to do with local land-use. As it turns out, everything.

For instance, there was a battle royale in San Francisco this fall over whether to allow a luxury condo development on the waterfront – [the 8 Washington Project](#). The development required special permitting because of the stringent zoning rules in San Francisco. [The city's Planning Commission and Board of Supervisors both approved the development](#). But opponents were able to gather enough signatures – 31,000 – to put the issue on the ballot as a referendum. (In a referendum, voters are asked whether to overturn a law enacted by the legislature; in an initiative, the voters are asked whether to change the law in the first instance, without prior legislative decisionmaking.)

[The opponents won in a landslide](#). And the vote was taken (rightly or wrongly) as [a vote against denser development in San Francisco](#), denser development that is [sorely needed](#) as [housing costs rapidly rise in the Bay Area](#).

The 8 Washington Project is not an isolated instance. Major law firms that work in the land-use field [often develop their own specialties in elections law because initiative and referendums are such an integral part of the land-use permitting process](#). In my home town of Albany, opponents of a proposed development on UC property tried both a [CEQA lawsuit](#) and [a ballot referendum](#) to overturn the city government's approval of a development agreement with the UC. The [CEQA lawsuit failed](#); but the mere fact that the opponents got enough signatures to trigger a special election on the issue was enough for the [city to back down](#), since it didn't want the expense of an election.

Is this a problem? On the one hand, the initiative and referendum process ensures

a certain level of public involvement in land-use decisions. That might be important if you think that local governments are susceptible to capture by land development interests and are too likely to give sweetheart deals to developers at the expense of public interests (such as environmental protection).

On the other hand, there is no question that even just the threat of an initiative or referendum affects how land-use development occurs. Development projects that might be controversial not only have to be CEQA bullet-proof, but also can expect a possibly costly and extended political campaign. That raises costs for many development projects – both because of the direct costs of running the campaign, but also because of the costs of delay (which raises the costs of financing the project) and uncertainty (ditto).

I'm not sure if there's a good solution here. But I do know that if we're serious about trying to make urban infill development easier, we shouldn't be focusing just on CEQA. Looking at how the initiative and referendum process affect land-use is important as well.