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AB 440: Cost Recovery and Regulatory Immunity Powers for Cities

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On October 5, Governor Brown signed AB 440 into law, a powerful piece of legislation that extends to cities powers similar to those exercised by redevelopment agencies using the Polanco Redevelopment Act. This law recognizes the valuable tool that the Polanco Redevelopment Act provided to public agencies that had to deal with contaminated property in their midst – a problem common to almost every city in California. This law will ensure that contaminated properties can find their way back into use.

What does this law do?

AB 440 adds a new Chapter (6.1) to the Health and Safety Code and follows some of the same pattern of legislation pioneered in the Polanco Redevelopment Act. If a city (defined as a “local agency”) makes a finding that a property is blighted, the city is then empowered to take “any action” that is “necessary” and “consistent with other state and federal laws to investigate and cleanup a release of hazardous materials.” After performing cleanup activities, the city can obtain regulatory immunity, and pass along such immunity to future owners and developers of the property. The new act ends with a statement that this act is the “policy successor” to the Polanco Act, and that judicial constructions of the Polanco Act should also apply to this new Chapter.

The law also allows for cities to seek environmental information about a property, or to obtain access to the property to perform an investigation or remediation.

How can this help you?

City leaders have long realized that cities need tools to fight contamination so that residents can live, work and play in healthy neighborhoods. Projects and new land uses shouldn't be forever halted by the discovery of hazardous materials. Cities, developers, and community representatives should consider how to use these tools to enter into new agreements that will result in cleanups and immunities for the city, its successors in interest, future owners and developers.

Opper & Varco pioneered such strategies using the Polanco Redevelopment Act and would be pleased to meet with city representatives, activists, developers, or lenders to discuss how this new tool can be employed. Call us for more information.

Questions? Call or e-mail Richard Opper or Linda Beresford at 619-231-5858, ropper@envirolawyer.com or lindab@envirolawyer.com

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