



CPDB REAL ESTATE CLIENT ALERT- September 2009

Recent Court Ruling Threatens Inclusionary Housing Requirement for Residential Rental Projects

A recent California Court of Appeal case struck down an affordable (inclusionary) housing requirement for a market rate residential rental project on the basis that it violated state rental control laws by mandating the provision of rent-restricted affordable units or an in lieu fee. This decision is a major setback for affordable housing advocates and has significant implications for inclusionary programs throughout the state.

In *Palmer/Sixth Street Properties, L.P., et al., v. City of Los Angeles*,¹ the California Court of Appeal determined that an affordable housing requirement for a market rate apartment project violated rent control law pursuant to the Costa-Hawkins Rental Housing Act² (“Costa-Hawkins”). The City of Los Angeles approved a proposed 350-unit apartment complex on the condition that the developer (Palmer) comply with affordable housing requirements in the Specific Plan. For multi-family residential and mixed use projects, the Specific Plan requires that if a project involves the demolition of certain affordable units, then it must replace those units at a one-to-one ratio or designate a certain percentage of the project's units as affordable. For multi-family residential projects the developer has the option of paying an in lieu fee. Because 60 affordable rental units were demolished on the project site, Palmer was required to replace those rental units (on-site or off-site) or pay an in lieu fee of about \$5.7 million.

Palmer sued the City claiming that this requirement violates the so-called “vacancy decontrol” provisions of Costa-Hawkins because it would set the initial rent for those 60 units and would require preservation of that rental rate for 30 years or the life of the project, whichever is greater. Costa-Hawkins provides that residential landlords have the right to “establish the initial rental rate for a dwelling or unit” when the dwelling or unit is built or later becomes vacant. The Court agreed with Palmer, finding that Costa-Hawkins conflicts with and preempts the City's affordable housing requirements under the Specific Plan.³

The Court disagreed with the City's contention that the in lieu fee provisions do not conflict with Costa-Hawkins. The Court found that the fee provisions were “inextricably intertwined” with the affordable housing requirements because “the fee amount is based solely on the number of affordable housing units that the developer must provide under the [Specific] Plan.”⁴

The City filed a petition for review on August 31st with the California Supreme Court, which has 90 days to grant or deny the review.

For further information on issues pertaining to this update contact **Tay Via** at tvia@coblentzlaw.com or **Caroline Guibert** at cguibert@coblentzlaw.com or (415) 391-4800.

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¹ (2009) 175 Cal. App. 4th 1396.

² Civil Code §§ 1954.50 et. seq.

³ *Palmer* will not impact projects that involve government assistance (a direct contribution or any other forms of assistance specified in Government Code Sections 65915 and following).

⁴ 175 Cal. App. 4th at 1411.