



Real Estate CPDB Update

Update to September Alert: Supreme Court Declines to Hear *Palmer* Case Regarding Inclusionary Housing Requirements for Residential Rental Projects

In September, we issued an alert¹ about a recent California Court of Appeal case (*Palmer*)² which 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 rent-restricted affordable units or an in lieu fee. On October 22, 2009, the California Supreme Court declined review of the Court of Appeal's decision, which means that *Palmer* remains as precedent, calling into question inclusionary housing requirements for residential rental projects throughout the state.

What is next?

Many local jurisdictions are re-evaluating their exactions and considering whether they are vulnerable to challenge based on the *Palmer* decision. In some cases, this may result in modifications or alternative approaches. For example, *Palmer* struck down not only the replacement rental unit requirement, but also the in lieu fee option, because it was based solely on the number of replacement units that the developer was otherwise required to provide. Might another approach to in lieu fees be upheld if based on a different rationale? Also, in many jurisdictions, the majority of new market rate residential units are for-sale rather than rental units, and the inclusionary units are largely for-sale products as well. Those jurisdictions might

¹ [Click here to access original alert.](#)

² *Palmer/Sixth Street Properties, L.P., et al., v. City of Los Angeles* (2009) 175 Cal. App. 4th 1396.

choose to avoid residential rental inclusionary requirements altogether, using the inclusionary scheme to provide market rate for-sale units only, and relying on other resources to deliver affordable rental units.

Also, look for affordable housing advocates to seek new legislation to allow inclusionary residential rental requirements. Various advocates submitted an amicus brief supporting the City's petition to the Supreme Court, and these groups can be expected to advance a legislative proposal.

In the meantime, *Palmer* remains as precedent, and this creates uncertainty both for local jurisdictions with inclusionary residential rental requirements, and for developers seeking to determine what is required for their projects. We will continue to track this issue and to keep you informed of any new developments.

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