Court of Appeal Holds that Inclusionary Housing Requirements Violate the Costa-Hawkins Rental Housing Act

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In this Alert, we discuss the implications of Palmer/Sixth Street Properties v. City of Los Angeles, which will affect inclusionary housing requirements for rental properties.

The California Court of Appeal has upheld a challenge by a Los Angeles developer to the City's affordable housing requirements, which could sound the death knell for inclusionary housing requirements for rental projects in California. The case stems from the Los Angeles Central City West Specific Plan's requirement that applicants for multiple-family residential or mixed use projects either set aside at least 15% of the dwelling units for low income families or pay in lieu fees of nearly $100,000 per unit. The Court's decision could set a precedent that would wipe out inclusionary housing requirements for rental properties.

In Palmer/Sixth Street Properties v. City of Los Angeles (July 22, 2009, B206102), the developer sued the city on the grounds that the Specific Plan's affordable housing requirement violates the Costa-Hawkins Rental Housing Act (Civ. Code, § 1954.50 et seq.). The Costa-Hawkins Act, which was enacted by the state in August 1995, established "vacancy decontrol" by declaring that, notwithstanding any other provision of law, all residential landlords may, with few exceptions, establish the initial rental rate for a dwelling unit. The Court found that the Specific Plan's affordable housing requirements as they apply to rental units conflict with and are preempted by the Costa-Hawkins Act, rendering them invalid. The City argued that the in-lieu fee requirement should still apply, as a fee does not interfere with the landlord's ability to establish the initial rental rate. The Court declined to save the City's in lieu fee requirement, however, finding it "inextricably intertwined with the invalid portion of the Plan's affordable housing requirements."

The Court's ruling in the Palmer/Sixth Street case clearly addresses the conflict between the Costa-Hawkins Act and inclusionary rental housing requirements enacted by other governmental agencies. Jurisdictions with inclusionary rental housing ordinances should expect their laws to be challenged. A question remains whether the Court's ruling applies to the affordable housing provisions in the Mello Act (Govt. Code, § 65590 et seq.), which was enacted in 1982. The Mello Act is a statewide law that seeks to preserve affordable housing in California's Coastal Zone by requiring 10% of the dwelling units to be set aside for affordable housing. Although the Court's decision does not directly address the Mello Act, the

Court's finding that laws requiring affordable housing conflict with the Costa-Hawkins Act means that a court challenge to the Mello Act may also come at some point.

Please feel free to contact the authors of this Alert directly; they will be happy to discuss this further with you and provide you with the assistance you need.