

THE AGC ALERT

an update on legal developments

October 5, 2009



COURT RULINGS ILLUSTRATE TREND AGAINST AFFORDABLE HOUSING REQUIREMENTS

Affordable housing can be one of the most controversial issues a community faces, often pitting developers, landlords, interest groups, and public agencies against each other. This issue is receiving increased attention by California's courts, as several recently-decided cases address the legality of affordable housing requirements. In a potential boon to property owners, and blow to cities and affordable housing advocates, these cases have largely rejected affordable housing restrictions, and make it increasingly difficult for public agencies to justify affordable housing requirements.

One of the most significant cases is *Palmer/Sixth Street Properties, LP v. City of Los Angeles*.¹ In this case, the City of Los Angeles sought to impose affordable housing requirements on a developer who was constructing a rental housing project. The court held that the City's affordable housing requirements could not be imposed on that project because they conflicted with the Costa-Hawkins Rental Housing Act² which gives developers of rental housing the absolute right to set the initial rental levels of their projects (provided that their project does not receive government assistance). The court held that the affordable housing requirements have the effect of mandating the rental rates of the project, and therefore conflict with the Act's requirements. This case may have broad implications for new rental housing construction, as cities may be substantially restricted in imposing affordable housing rental limits on those projects.

Another important case is *Building Industry Ass'n of Central Cal. v. City of Patterson*.³ In this case, the court invalidated an affordable housing in lieu fee (\$20,946/unit) because the City failed to articulate how the fee amount related to the City's affordable housing needs. The holding in this case is applicable any time a "public agency" seeks to impose an in lieu fee which fails to satisfy the "reasonable relationship" test. Thus, cities, counties and other agencies should consider this case when imposing and increasing affordable housing in lieu fees.

A case which may be similarly problematic for public agencies is *Weisblat v. City of San Diego*⁴ in which the court invalidated a City levy that was charged to landlords to recover costs in administering the City's rental unit business tax. The court held that the levy failed to comply with California's restrictions on taxes (commonly known as "Prop 218") because it was the type of charge which requires voter approval in accordance with Prop 218, and



ALVAREZ-GLASMAN & COLVIN
ATTORNEYS AT LAW

Southern California
13181 Crossroads Pkwy
Suite 400 West Tower
City of Industry, CA 91746
tel 562.699.5500

Northern California
600 Bicentennial Way
Suite 300
Santa Rosa, CA 95403
tel 707.542.4833

To learn more about AGC and the fields of law that comprise our practice, please visit our [website](#), or contact **Matthew Gorman** at 707.542.4833

had not been so approved. This case will likely make it more difficult for public agencies to impose cost-recovery measures in their affordable housing programs.

Finally, in the most recent case, *Guggenheim v. City of Goleta*,⁵ the Court of Appeal held that the City's mobile home rent control provisions amounted to a "regulatory taking," entitling the mobile home park owners to just compensation. The City's rent control ordinance limited rent increases to 75% of the increase in local CPI per year, but housing costs in the City had increased by 225%. Applying the factors provided in the U.S. Supreme Court's precedent-setting "*Penn Central*" case,⁶ which sets the legal standard for regulatory takings, the court held that the rent control restriction was a substantial economic hardship on the owners and, while it did not strongly interfere with the owners' investment backed expectations, it nevertheless forced the owners to bear the burden of supplying affordable housing to the public rather than placing this burden on the taxpayers, at large. Thus, the court held that the mobile home rent control ordinance was a regulatory taking and the City must compensate the owners for their losses caused by the ordinance.

As these cases make clear, issues concerning affordable housing remain contested and challenging. Property owners, landlords, developers, and property rights activists should be heartened by the trend these cases illustrate. Conversely, cities, counties, public agencies, and housing rights advocates face new challenges in light of these cases, and should pay careful attention to the courts' reasoning when imposing affordable housing restrictions in the future.

As always, Alvarez-Glasman & Colvin attempts to keep its clients abreast of recent developments in the law. Should you like copies of these cases, further explanation, or have any further questions, please contact Matthew M. Gorman by phone at (707) 542-4833, or by e-mail at mgorman@agclawfirm.com.

Legal Authorities:

¹ *Palmer/Sixth Street Properties, LP v. City of Los Angeles* (July 2009) 175 Cal.App.4th 1396.

² Costa-Hawkins Rental Housing Act, Civil Code § 1954.50, *et seq.*

³ *Building Industry Ass'n of Central Cal. v. City of Patterson* (March 2009) 171 Cal.App.4th 886.

⁴ *Weisblat v. City of San Diego* (Aug. 2009) 98 Cal.Rptr. 366.

⁵ *Guggenheim v. City of Goleta* (Sept. 2009) (9th Cir. Cal.) 2009 DJDAR 14205.

⁶ *Penn Central Transp. Co. v. City of New York* (June 1978) 438 U.S. 104.