

California Supreme Court Upholds Local Inclusionary Housing Mandates

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Cities may require residential developers to limit the sales prices of some units to "an affordable housing cost" as a permissible way to increase affordable housing. In an opinion released Monday, the California Supreme Court upheld the City of San Jose's inclusionary housing ordinance, which requires developers of more than 20 new, additional or modified dwelling units to sell at least 15% of the units at an "affordable housing cost." The San Jose ordinance seeks to increase the City's stock of affordable housing and to promote economically diverse residential projects by placing controls on the sales price of a portion of a developer's on-site for-sale units.

The California Building Industry Association, in its challenge to the ordinance, argued that the 15% requirement would only be valid if the City proved that the requirement was reasonably related to the proposed new development's adverse impact on the City's affordable housing problem. The Court rejected that argument.

Instead, the Court upheld the ordinance, reasoning that legislatively-imposed price controls are a constitutionally permissible means to achieve a municipality's legitimate public purpose of increasing the availability of affordable housing units. In so ruling, the Court rejected application of heightened review which normally applies to ad hoc demands to dedicate property or payments in lieu of such dedications (so-called "exactions") under the "takings" clauses of the United States and California Constitutions.

According to the opinion, more than 170 California cities have inclusionary housing programs.

If you have any questions or would like more information regarding how this ruling may impact your housing programs, please contact Amanda Charne, Greg Stepanicich or any member of our Public Law Department.