



## HOW A COURT DECISION CAN AFFECT YOU

BY  
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Do you own, manage, or sell residential rental property?

Do real property transfer fees affect you when there is a sale?

Do you like government capturing a percent of the real property sales price to pay for well established and ever growing affordable housing programs?

State and local governments are positioning themselves to change the laws affecting these areas due to a court battle that was settled last year.

Geoff Palmer is a developer of apartment in Los Angeles who successfully sued the City of Los Angeles to avoid a mandate of the city to agree to: 1) impose rent control on 60 “new replacement rental units” for no less than 30-years or; 2) pay an in lieu fee at an approximate cost of \$10 million. Mr. Palmer argued that the cities affordable housing requirements violate the Costa-Hawkins Act (Act) on the theory that the Act pre-empts the area of rent control regulation on newly constructed rental housing.

The fall out of the Palmer decision has begun. The City of Berkeley, City and County of San Francisco, City of Santa Monica and the City of Los Angeles are asking the legislature to reverse the Palmer decision and they are also taking specific actions to mitigate the impact of the decision.

If tradition holds true, what happens in “Las Vegas” (one city) will not stay in “Las Vegas” because there is too much at stake. Most notably there are over 170 cities that have affordable housing programs (commonly referred to as “inclusionary zoning programs”) and over a dozen large metropolitan cities that have rent control that are directly affected by the Palmer decision.

The reason why governments and housing advocates are not expected to leave the decision stand is due to the millions upon millions of dollars that were flowing

into local government coffers to pay for all of the affordable housing programs until the Palmer decision was final.

If cities stand down and do nothing, low-income rental housing:

- Will erode.
- Aggressive local government housing programs will become a shadow of themselves.

Because the future looks dim for affordable housing, let's look at what cities are doing in the short run. One city acknowledges that because of the Palmer decision, their inclusionary zoning ordinance may not be enforceable and as a consequence the tens of millions of dollars that was flowing into their housing programs must be changed. One of the city fathers in that city is proposing to require landlords who own rental housing constructed between 1978 (the beginning of their rent control ordinance) and 1995 (the year that the Costa-Hawkins Act became law) be subject to rent control.

Another city was planning to adopt a "Mixed Income (housing) Ordinance" until the Palmer decision and as a consequence of the decision have gone back to the drawing board. That planning staff of that city is expected to present new versions of the "Mixed Income Ordinance" within the next five months. Alternatives to the original Mixed Income Ordinance proposal include:

- A limitation on the sale price of the property instead of imposing rent control.
- An anti speculation restriction which could prohibit an owner from selling the property for a period of years.
- Requirements that limit construction to certain areas of cities that is often times referred to as urban limit lines.

A city in northern California is looking at adopting a new ordinance that would require "just cause for eviction" requirements. This proposal could include single-family rental housing.

One county supervisor has proposed an ordinance to "protect and strengthen our affordable housing" by requiring that at least 20 percent of the total units constructed must be affordable and located off-site within one mile of the principal development.

A mayor has proposed a transfer fee on all real property to pay on an ongoing basis. He is suggesting that the current affordable housing fee of more than \$333,478 per unit would be reduced if a transfer fee were approved by the city council. Some observe that he could exempt single-family homes and just target residential rental, commercial and industrial property sales.

The California legislature could become extremely creative in its' approach to respond to the Palmer decision by:

- Amending the Costa-Hawkins Act to repeal the state pre-emption clause, thereby gutting the Act. If this were the case, local government could largely ignore the Act and begin to adopt extremely onerous rent control requirements. This could be the undoing of the Act. Consider the following list of other “state legislative” solutions:
  - Require state wide just cause for termination of tenancy which some argue would maintain affordable housing.
  - Eliminate the single-family rental housing exemption from the Costa Hawkins Act.
  - Curtail or strike the vacancy decontrol provision in the Costa Hawkins Act, which landlords argue is a critical provision to reset the rents upon vacancy.
- Proposing a constitutional amendment that would authorize local governments to adopt transfer fees to pay for affordable housing programs.
- Authorizing local governments to adopt and enforce inclusionary zoning ordinances.
- Assuring that all “rent controlled units” including inclusionary price controlled units, shall be exempt from the application in the Palmer decision.

In a year of substantial economic uncertainty for housing, what better time to change the law to assist low-income households in light of the Palmer decision?

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