

Universal Inclusionary Housing

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State mandates to provide affordable housing

- Housing element update is for *planning* for affordable housing; i.e., zoning

- State monitors progress in attaining affordable housing during 8-year cycle.
 - Cities and counties have few tools and little state revenues to provide below market-rate housing
 - New market-rate housing will come on the market slowly over the next 10 years and only gradually impact rents, especially at the affordable end

Rent Control/Rent Stabilization

Rent control -- Landlords are not able to raise rents while the same tenant remains.

➤ Provides a mechanism against spiraling rent increases

Problems:

- Not targeted to those in need
- Discourages turnover. Benefits those who don't move.
- Discourages new rental housing starts

What is inclusionary housing?

- For new rental housing developments, inclusionary housing is a requirement that landlords dedicate housing as affordable (e.g., 20% of the new units) and rented to those with lower incomes.
- Prohibited from 2009-2017 as a result of the 2009 *Palmer/Sixth Street Properties, L.P., et al. v. City of Los Angeles*. Reversed in 2017 by AB 1505.

Universal Inclusionary housing by using a parcel tax

The city would impose a parcel tax on rental units. A building or a development would be taxed based on the number of units.

- Different tax rates to allow for buildings below 10 units to be essentially exempt.
- Revenues would go to fund affordable housing

Tax phased in over time

- Buildings below the affordable housing % target would be taxed based on the numbers of units short of the annual percentage target.
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- The tax would need to be phased in over multiple years to enable property owners to provide inclusionary housing and not pay a tax.
 - The purpose of the tax would be to encourage or enable affordable housing. It would not be to raise revenue, per se.

In lieu alternative: On-site affordable housing

- The alternative to paying the tax is to provide inclusionary housing.

- As units open, when tenants leave their apartments, landowners could convert units to inclusionary housing and avoid a tax.
- Landlords might also satisfy the requirements of the ordinance by offering existing lower-income tenants lower
- Where new affordable housing units are the same type of housing as other units, for existing developments, all units may be eligible, including micro units.

Exempted

- Housing developments already providing affordable housing units would be exempt from the tax.
- Developments covered by inclusionary or where a developer opted to pay the in-lieu fee alternative would not be taxed again

CONS/Challenges

- Operates as a special tax, requiring a 2/3 vote.
- It does not affect the inventory of housing stock.
- Must ensure that the owner receives a “fair return,”

PROS

- Greatly expands the availability of affordable housing
- Unlike rent control, it is targeted assistance.
- Won't affect the new housing starts.
- Rental rates are determined by the high-cost producers of housing already burdened by inclusionary housing (and high construction costs).
- Existing properties, previously protected from inclusionary housing have a government-created lower operating costs

Transfer tax alternative

- Available only for charter cities.
- Tax imposed on the sale of real property and a change in ownership. Or building owner can choose to establish affordable housing on site.
- Imposing inclusionary housing requirement on buildings upon a sale of the building just puts any potential buyer on notice of this obligation.
- However, impacts are slower as it only takes effect as buildings are sold. In addition, it might discourage the sale of any buildings to new owners.

Universal Inclusionary Housing: Legal Considerations

Ethan Walsh

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Inclusionary Housing—Legal Framework

- Based on local government land use authority.
- *Home Builders Ass'n of Northern California v. City of Napa* (2001) 90 Cal.App. 4th 188
- *Calif. Bldg. Indus. Ass'n v. City of San Jose* (2015) 61 Cal.4th 435
- *616 Croft Ave., LLC v. City of West Hollywood* (2016) 3 Cal.App.5th 621

Inclusionary Housing—Rental Housing

- Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009)
175 Cal.App. 4th 1396
- AB 1505 (2017): Gov't Code Sec. 65850, 65850.01

Parcel Taxes for Inclusionary Housing

- Land use authority v. taxing authority
- Proposition 13: Limits *ad valorem* property taxes
- Parcel taxes: Charged on a per parcel basis, not on property value
- Practical considerations



Questions?

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Inclusionary Housing: Building Inclusive and Sustainable Communities

League of California Cities Conference
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Community and Regional Development



Presentation for Today

- ❑ Who is the California Coalition for Rural Housing?
- ❑ Brief history of Inclusionary Housing (IH)
- ❑ What is *Inclusionary Housing* and how can it be used to achieve mixed-income communities?

California Coalition for Rural Housing



Mission: Strengthen capacity of nonprofit and public sectors to improve quality of life of rural and low-income Californians via production and preservation of decent and affordable homes.

❑ *Formed in 1976, oldest statewide affordable housing coalition in U.S.*



California Coalition for Rural Housing



- ✓ *Public Policy Advocacy*
- ✓ *Leadership Development*
- ✓ *Asset-Building*
- ✓ *Technical Assistance*
- ✓ *Community and Tenant Organizing*
- ✓ *Research and Public Education*



Inclusionary Housing: Creating Affordability and Inclusion in New-Growth Areas

- A policy that requires or encourages new residential developments to include a certain percentage of affordable housing units for lower and moderate-income households.
- Also known as *“Inclusionary Zoning”*

Inclusionary Housing in California: 50 Years of Innovation

- Palo Alto - First California program in 1973
- 1994 Study – 64 IH Programs
- 2001 Study – 107 IH Programs
- 2007 Study Results:
 - ✓ At least 144 different IH programs in California
 - ✓ About 27% of all California cities and counties
 - ✓ At Least 30,000 affordable units produced 1999-2006
- 2019 Grounded Solutions Study – 143 IH Programs



Legal Basis for Inclusionary Housing

- No State IH mandate!!
- Voluntary adoption in city or county code
- 2009 – Palmer v. City of Los Angeles, IH violates Costa-Hawkins State rent control prohibition
- 2009 – Building Industry Association v. City of Patterson, IH policies need nexus justification
- 2015 – California Supreme Court, upheld IH as valid exercise of local powers
- 2017 - AB 1505, restored local power to adopt rental IH programs



Reasons for Growing Popularity of Inclusionary Housing in California

- Demographic, Market, Political, Legal Pressures
 - ✓ Enormous Population Growth
 - ✓ Increasing Housing Costs
 - ✓ Decreasing Supplies of Affordable Housing
 - ✓ Dwindling Availability of Buildable Land
 - ✓ Shrinking Federal and State funding relative to need
 - ✓ Housing Element/Regional Fair Share Allocation Laws

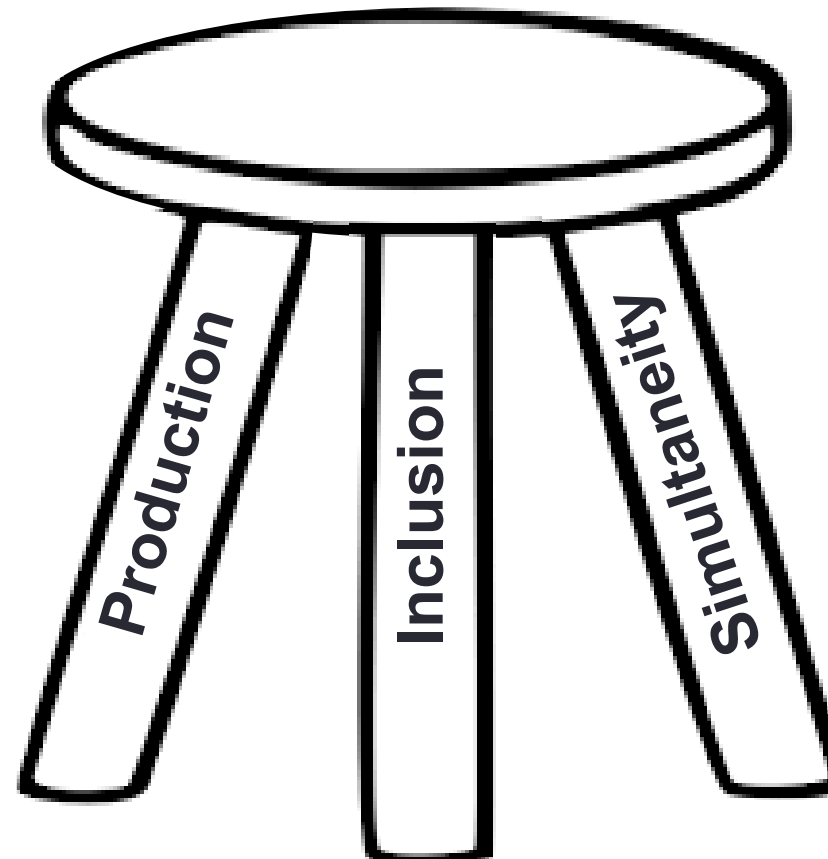


Housing Elements and Regional Fair Share Allocations

- Law adopted in 1969
- Localities required to prepare housing plan every 8 years
- Localities required to accept fair share of Regional Housing Needs Allocation, including identification of sites
- “Soft” penalties for non-compliance:
 - ✓ Reduced competitiveness or ineligibility for housing and community development financing
 - ✓ Subject to legal challenges by citizens’ groups
- Court-ordered adoption of IH



Inclusionary Housing is a 3-Legged Stool



Key Components of an Inclusionary Housing Program

- On-Site Production of Affordable Units
- Alternatives to On-Site Production
 - Off-Site Production
 - Land Dedication
 - In-Lieu Fee
- Compliance Incentives



Incentives to Offset Developer Costs

- Density Bonus
- Flexible Design (unit/lot size, amenities, product)
- Subsidies
- Fee Deferral, Waiver, Reduction
- Fast-Track Processing



Arguments Against Inclusionary Housing

- Taxes One Group to Benefit Another
- Reduces Overall Housing Production
- Shifts Costs to Middle-Income Families
- Lowers Property Tax Revenues
- Exports Inner-City Problems



Counter-Arguments of Inclusionary Proponents

- Development is a Privilege, not a Right – Social Cost Nexus Justification
- No Evidence that Inclusionary Decreases Production
- No Evidence of Cost-Shifting to Market-Rate Housing
- Cost Off-Sets Reduce Impacts on Developers – Still Earn Reasonable Rate of Return on Investment
- Landowners Share Costs with Developers – Reduced Land Values



Windmere Apartments:

Family Housing in Upscale Mace Ranch Subdivision



Walnut Terrace Apartments:

Senior Housing in Upscale Mace Ranch Subdivision



Willow Glen Apartments: Senior/Disabled Housing in Upscale Mace Ranch Subdivision



2-Bedroom House:

Single-Family Unit in Upscale Mace Ranch Subdivision



Expanding Inclusionary Housing to Cover Existing Housing

- Observations

Thank You

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Questions?

