


goldfarb
lipman
attorneys

Inclusionary Housing: Responses to *Palmer* and *Patterson*

Non-Profit Housing Association of Northern California
July 2010




Do Nothing

Why?

- No facial challenge
- No cost/no staff time
- Implement consistent with *Palmer*:
don't require affordable rental housing
when no incentive or agreement

goldfarb lipman attorneys 2



Do Nothing

Why not?

- No requirements for rentals
- Mapped projects that are rented
- Litigation risk for *Patterson* claims
- Ad hoc panic mode

goldfarb lipman attorneys 3




No Inclusionary Rentals

Why?

- Minimal changes: amend ordinance to:
 - Apply to all mapped projects and condo conversions
 - Eliminate applicability to unsubsidized rentals
- Minimal staff time

goldfarb lipman attorneys 4




No Inclusionary Rentals

Why not?

- No unsubsidized affordable rentals
- Litigation risk for *Patterson* claims

goldfarb lipman attorneys 5



Nexus Studies

What is a nexus study?

Homebuyer

➔


disposable income

Housing need

➔

local employment

goldfarb lipman attorneys 6




Nexus Studies

Why?

- Protect against exaction challenge
- Can impose fees on rental housing

goldfarb lipman attorneys 7




Nexus Studies

Why not?

- *Concern that would not justify as much affordable housing*
- Expense of nexus studies
- *Concern that will concede the issue*

goldfarb lipman attorneys 8




Repeal, Waive, Reduce

Why?

- Developer pressure
- Housing development infeasible
- More market-rate housing affordable

goldfarb lipman attorneys 9




Repeal, Waive, Reduce

Why not?

- Local commitment
- Housing activists
- Perception that needed for adequate housing element
- Legal issues seem minor – so far

goldfarb lipman attorneys 10




Peninsula Litigation

All allege inclusionary requirements are exactions

- Palo Alto
- Sunnyvale
- San Jose


goldfarb lipman attorneys 11



Protecting Inclusionary Requirements

- Statute of limitations
- Section 66020 protest procedures
- Notify of requirement and right to protest *at time of* project approval to cut off all claims


goldfarb lipman attorneys 12



Protecting Inclusionary Requirements

Avoid unlimited discretion

goldfarb lipman attorneys 13



Conclusions

- *Palmer and Patterson v. Napa*
- More difficult to reconcile policy desires with legal boundaries

goldfarb lipman attorneys 14



goldfarb
lipman
attorneys

Barbara Kautz
Goldfarb & Lipman LLP

1300 Clay Street
Oakland, CA 94612
510-836-6336
bkautz@goldfarblipman.com
