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LAW ALERT

REQUIREMENT FOR AFFORDABLE RENTALS FOUND TO VIOLATE STATE RENT CONTROL LAWS

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In *Palmer/Sixth Street Properties LP v. City of Los Angeles*, decided on July 22, 2009, the California Court of Appeal for the Second District held that a condition of approval requiring 60 affordable units in a 350-unit rental project violated the Costa-Hawkins Act, which allows landlords to establish the initial rental rate for a new unit. The Court also invalidated the City's in lieu fee for the affordable rental units. The Court's expansive holding calls into question affordable housing and inclusionary requirements for new rental units.

The case resulted from the Central City West Specific Plan adopted in 1991 by the City of Los Angeles. The City found that the supply of affordable housing in the area had been reduced by one-third. Consequently, developers were required to either reserve 15% of new units for low-income households, or replace any low-income units that had been demolished. As part of his 350-unit development, Palmer was required to replace 60 low-income units that had been demolished on the site in 1990. He was also given the option of paying an in-lieu fee of approximately \$96,200 per low-income unit.

The Court concluded that the affordable housing condition violated the Costa-Hawkins Act, which was adopted by the Legislature in August 1995. Costa-Hawkins allows landlords to set the initial rent for a new unit and whenever a unit is vacant (so-called "vacancy decontrol"). At the time Costa-Hawkins was adopted, its proponents stated that it would

affect rent control programs in only five cities in California, although many more cities had adopted inclusionary ordinances. Nonetheless, the Court held that the statute was "clear and unambiguous" and allowed the *landlord* to set the initial rental rate. Since the City's affordable housing condition limited the rents that Palmer could charge, it violated the clear mandate of State law.

The Court also found that, because the objective of the in lieu fee was to impose affordable housing requirements and the amount was based solely on the number of affordable units, it was "inextricably intertwined" with the impermissible affordable housing requirement and so was also contrary to Costa-Hawkins.

Palmer applies only to affordable housing requirements for new rental units and *not* to requirements for ownership units. In addition, Costa-Hawkins does not apply where the owner has agreed to provide affordable rents by contract in exchange for a financial contribution or one of the many incentives contained in state density bonus law (including regulatory and density incentives). However, communities with inclusionary ordinances should carefully review their provisions regarding affordable rental units to ensure that they do not conflict with Costa Hawkins.

For further information, please contact Barbara Kautz, Polly Marshall, or any other Goldfarb & Lipman attorney at 510-836-6336.