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.

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.

• 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
Best Best & Krieger serves as a trusted partner and strategist to public and private sector clients across the nation. With offices spanning from coast to coast, the firm’s attorneys provide innovative legal solutions and cost-effective representation, working to protect and advance clients’ interests at every turn. BB&K is recognized for decades of groundbreaking successes, loyal service, and a culture of inclusion and respect.
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
  • *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
Inclusionary Housing:
Building Inclusive and Sustainable Communities

League of California Cities Conference
April, 2023

Robert Wiener, PhD
University of California, Davis
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

- Production
- Inclusion
- Simultaneity
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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