

City Does Not Have Burden of Showing Reasonableness of Housing Fees

Just over a year after the California Supreme Court strongly endorsed inclusionary housing ordinances, the Second District Court of Appeal upheld a city's collection of in-lieu housing fees against a developer's claim that the city failed to carry its burden of proving the fees were reasonably related to development impacts. [616 Croft Ave., LLC v. City of West Hollywood](#), No. B266660 (Second Dist. Sept. 23, 2016) Last year, in *California Building Industry Association v. City of San Jose*, 61 Cal. 4th 435 (2015), the California Supreme Court ruled that inclusionary housing ordinances are legally permissible as long as it can be shown an ordinance is reasonably related to the public welfare. The court rejected a claim that a city may impose inclusionary housing requirements on new residential development projects only if it first shows that the need for affordable housing is attributable to new development. (Our full report on the state supreme court decision is available [here](#).) The court of appeal recently applied the California Supreme Court ruling to deny a challenge to the City of West Hollywood's collection of fees for inclusionary housing. The city requires developers of for-sale residential projects with 10 or fewer units either to sell a portion of the newly constructed units at below-market rates or, alternatively, to pay an in-lieu fee designed to fund construction of an equivalent number of affordable units. The city conditioned approval of a developer's condominium project on payment of in-lieu fees. The developer paid the required fees under protest and filed suit.

New construction of a house in the Mueller neighborhood in Austin, TX Citing extensively from the California Supreme Court decision, the court of appeal rejected the developer's claim that the city had the burden of proving the fees were "reasonably related" to the deleterious impact of the development. The court held that the validity of in-lieu fees, as an alternative to an on-site inclusionary housing requirement, does not depend on whether the fees collected from a developer are reasonably related to that development's impact on a city's affordable housing need. Rather, like an on-site requirement, in-lieu fees only must be reasonably related to the overall availability of affordable housing, and the challenger must show the fee schedule was invalid, an effort the developer here did not undertake.

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