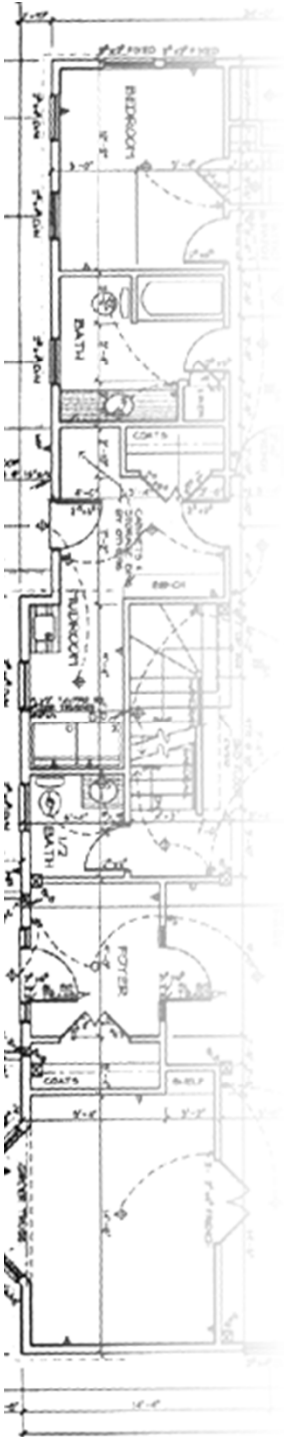


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Affordable Housing Ordinances: What's Next?

Responses to *Palmer* and *Patterson*

League of California Cities
City Attorneys Conference
May 4, 2011



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Recent Inclusionary Cases:
*Palmer, Patterson, and
Trinity Park*



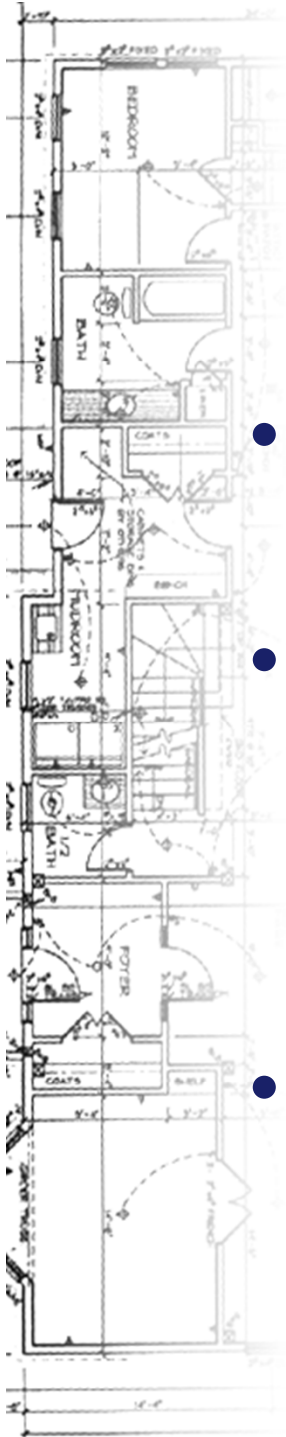
A Concerted Effort Against Inclusionary

- *Homebuilders v. City of Napa* (2001): case very supportive of inclusionary
- But - goal of development community:
 - Characterize as impact fees
 - Subject to *greater* scrutiny (*Nollan/Dolan* and Mitigation Fee Act; or at least ‘reasonable relationship’)



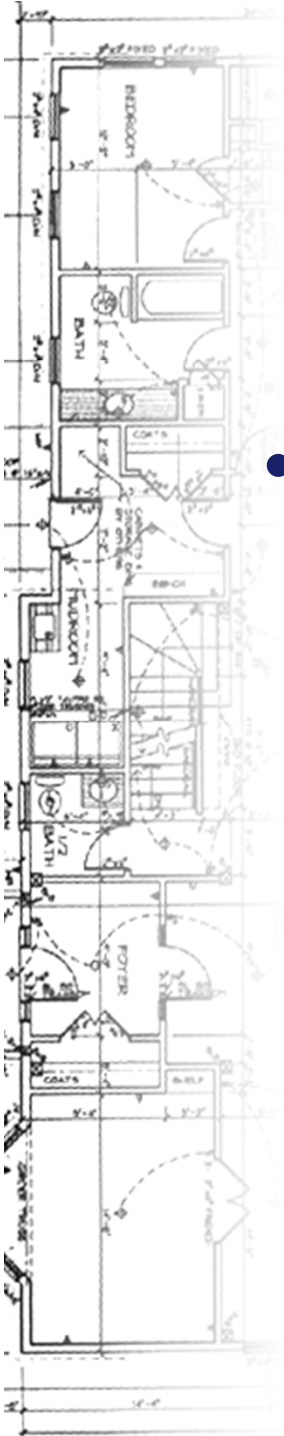
BIA v. City of Patterson

- *Patterson*: the first victory (sort of)
 - Treated as an impact fee
 - But demanded only “reasonable relationship” to project’s impact (*San Remo*)
 - Patterson did not argue that fee was an in-lieu fee



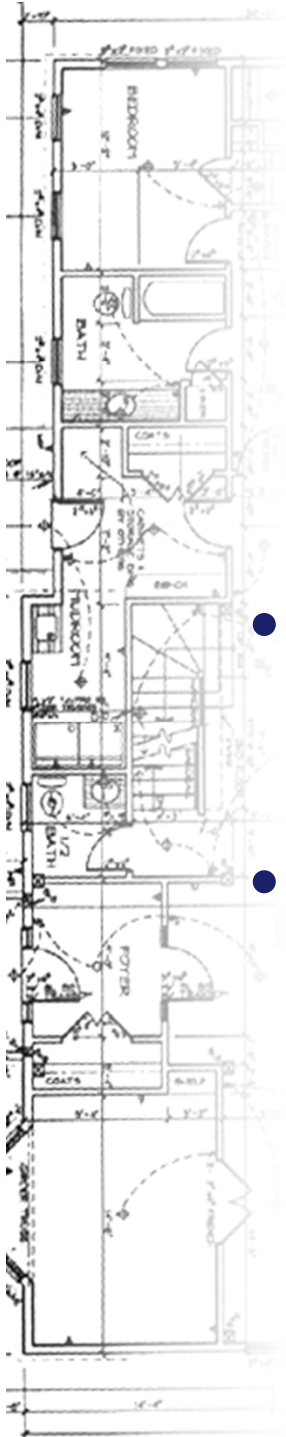
Trinity Park v. City of Sunnyvale

- Tried to use MFA protest procedures to avoid statutes of limitation
- “Other exaction” only where:
 - *Imposed* as a condition of approval; and
 - For purpose of defraying cost of *public facilities*
- Affordable housing *not* a public facility



Palmer v. City of Los Angeles

- Costa Hawkins Act:
 - In new buildings, landlord can set initial rent and rent at vacancy
 - Only exception: *contract* to limit rents in exchange for money or *form* of assistance in State density bonus law
 - Stated to apply to only 5 cities



Palmer v. City of Los Angeles

- Inclusionary requirement for new apartments violates Costa Hawkins
- In lieu fee “inextricably intertwined” and also preempted

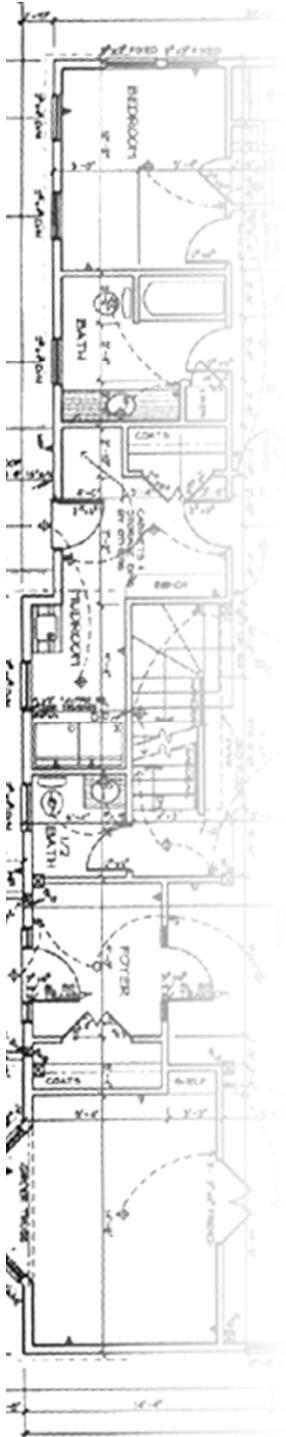


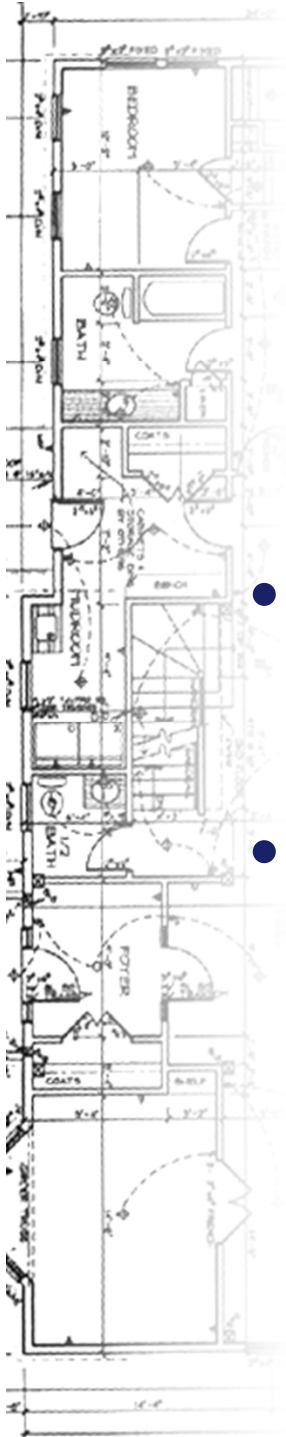
Embassy LLC v. City of Santa Monica

- Ellis Act waiver valid only if given in exchange for financial assistance
- Issue regarding whether developer could 'Ellis' the building if received only non-financial assistance

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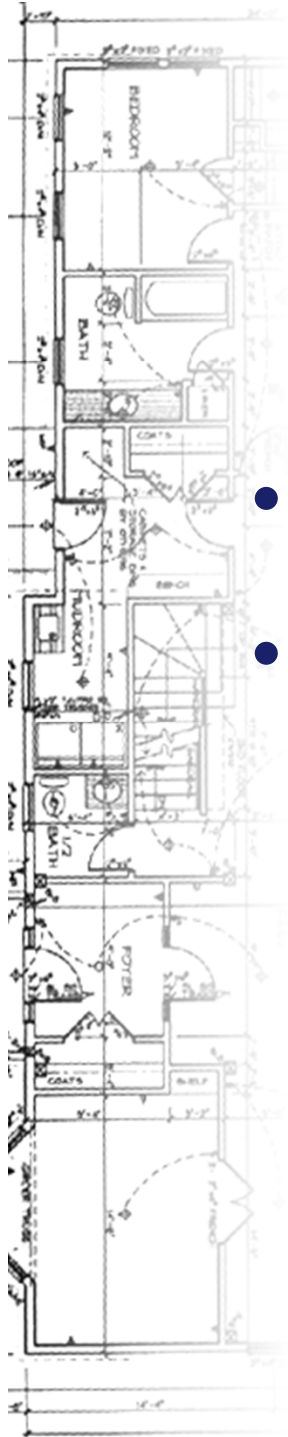
II. Responses to *Palmer* and *Patterson*





Not Affected by *Palmer and Patterson*

- On-site requirements for ownership units
- Projects that receive money or an incentive so long as *developer agrees* and enters into a contract with city



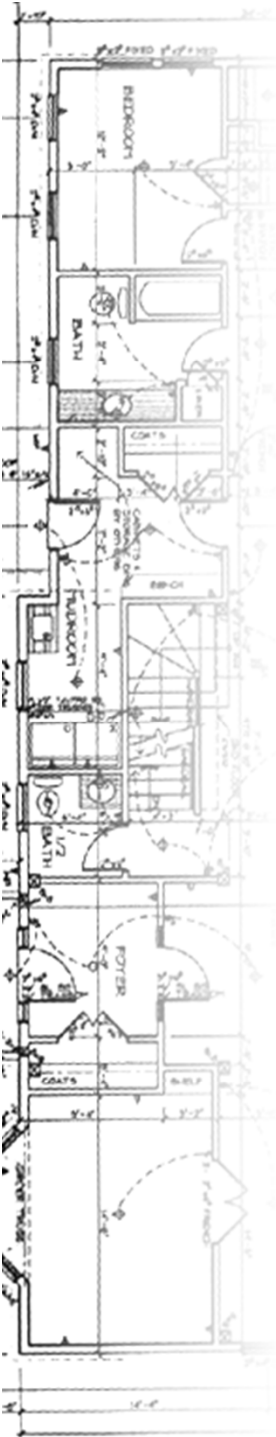
Provisions to Avoid After *Palmer*

- Rental inclusionary units
- *Voluntary* provision of rental inclusionary units without a contract *and* incentive



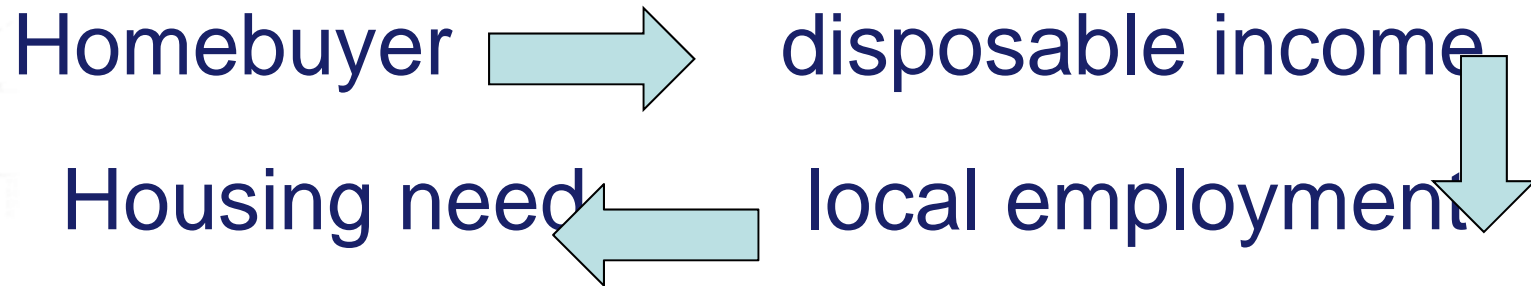
Most Common Response: Wait and See

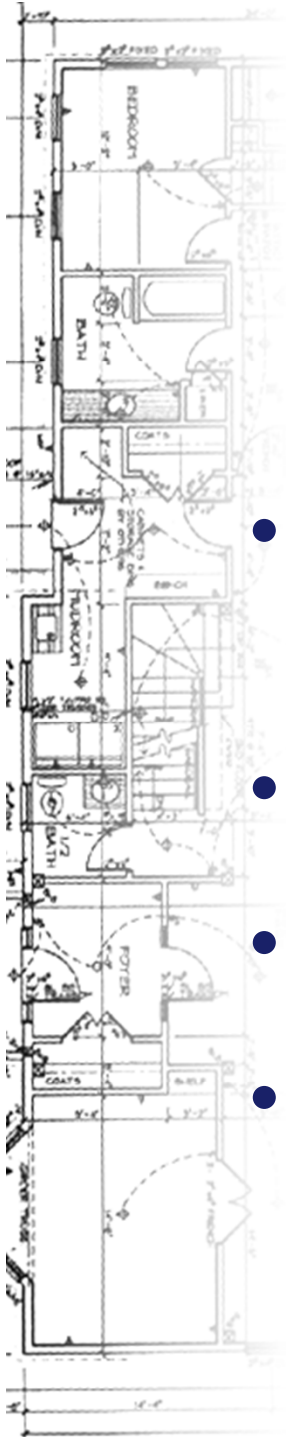
- No facial challenge
- No cost/no staff time; minimal development
- Implement consistent with *Palmer*
- Problematic for rented condos; litigation risk for *Patterson* claims



Do a Nexus Study to Justify Rental Impact Fee and Protect For-Sale Requirements

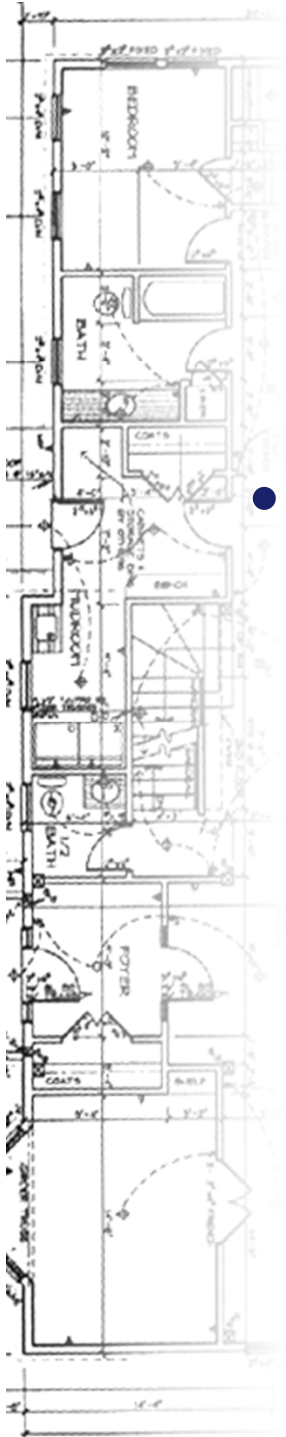
What is a nexus study?





Resistance to Nexus Studies

- *Concern that would not justify as much affordable housing*
- *Concern that ceding the argument*
- Hard to explain methodology
- Expense of nexus studies

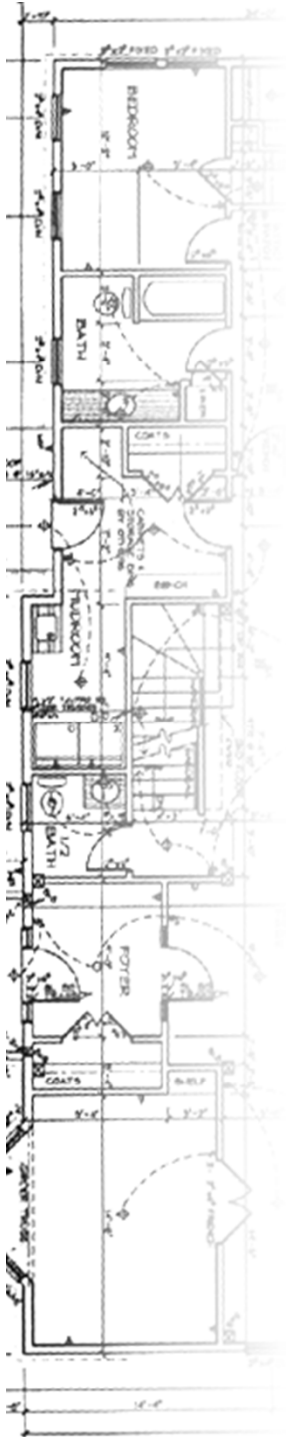


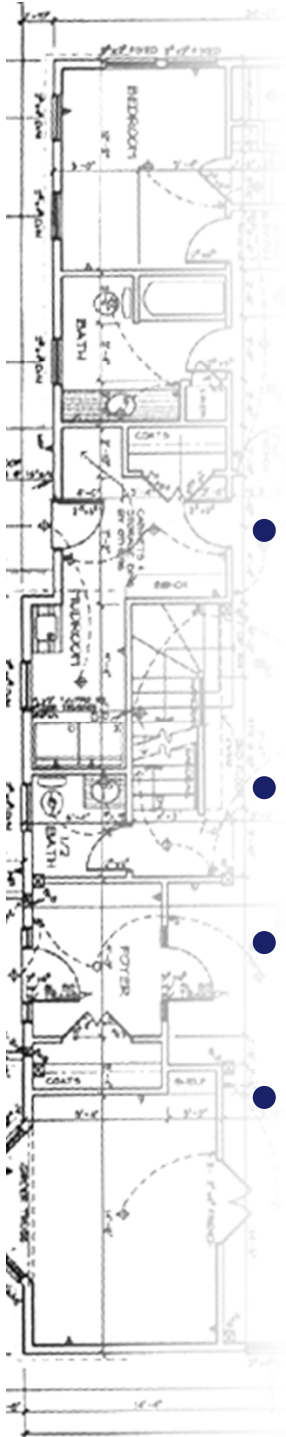
Converting Basic Inclusionary Requirement to a Fee

- Alternatives:
 - Ownership units
 - Contract for rentals consistent with Costa Hawkins
 - Enter into a development agreement

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III. What's Next?





Possible Futures

- Increased advocacy if RDA goes away; extended to commercial linkage fees
- Focus on low income and below
- Change at HCD?
- The danger of too much flexibility

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