

# Jeffrey Reid: Fresno City Council should reject inclusionary zoning

By Jeffrey  
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Recently our California Supreme Court ruled that home builders could be compelled to sell their homes at below fair-market value (California Building Industry Association v City of San Jose).

This right of a city to demand that a home builder sell a percentage of homes in a subdivision for less than fair-market value to a select few buyers is called “inclusionary zoning.” But, it is not zoning. It is simply government-mandated price control.

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Some applaud such governmental powers. In fact, politically powerful organizations in our community are attempting to impose these inclusionary zoning mandates as part of the new Development Code that our Fresno City Council will soon debate.

However, inclusionary zoning is dangerous economic theory and public policy. It is dangerous not just to those who build neighborhoods in our community, who are now prohibited rights to free-market sales. It is also a danger to homeowners who may want to sell their homes for a profit, and every merchant and grocer who wants the freedom to set the price of the goods they sell.

The California justices did not rule that inclusionary zoning is constitutional because it can be imposed as a condition of a rezone or subdivision map. In fact, in those circumstances the requirement would be an “exaction” that would have to meet a higher legal standard to not violate the Fourth Amendment’s prohibition on uncompensated taking of property.

The court also did not find that inclusionary zoning is proper because it attempts to offset some societal burdens that home building places on a community’s housing prices. That would require some relationship between the burden of inclusionary zoning and the development of new housing.

Instead, the court ruled that inclusionary zoning is constitutional only because any government can prohibit any person from selling his or her products or services at a fair-market value.

All lawmakers need are legislative findings that the price control serves a public policy goal, and maybe a consultant’s study that the policy won’t put all the grocers out of business. Armed with such findings, a city council can require a clothing store to sell some or all of its stock at below market prices to a certain favored group of people, placing the burdens of this public policy goal disproportionately on the store owner.

Likewise, a grocer could be mandated to sell its product at less than the fair-market price to help keep food prices down. Moreover, homeowners that want to resell their house for a profit can have that resale price capped by the government, to help keep housing prices affordable.

To be fair, some justices emphasized that they were not sure that government could force a person to sell something



for less than it cost them to produce it. However, the burden would be on the citizen to prove that he or she was losing money on their ventures in the price-controlled economy. As far as the court is concerned, losing the right to sell at the market price was not a taking of any property, and is not protected by our state or federal constitutions.

Everything that is legal is neither wise nor moral. If price controls are not unconstitutional, they should be. They are unfair and provide dangerous powers.

The burden of a policy of redistributing wealth should be widely disbursed and not based on arbitrary or discriminatory factors. That is what price controls do. The building of new homes does not hamper housing affordability any more than the price of cantaloupes is increased by bringing more of them to the market.

Inclusionary zoning is price control, not zoning, even if it uses the word “zoning” and even if it is put into a Development Code.

The Fresno City Council should oppose the proposal to adopt inclusionary zoning.

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