



ENDING HOUSING EXTORTION ACT

Summary: This model policy is designed to promote the production of housing by banning unconstitutional housing exactions—fees, conditions, allocations, or other concessions intended to prevent housing from being freely bought and sold. By banning housing exactions, the policy encourages new residential development, which drives down housing costs through increased supply. Likewise, it encourages new commercial development, which promotes housing affordability by spurring economic growth. The policy does not prevent private parties from entering into restrictive covenants, unless it is required by a government entity.

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Section 1: Findings

The legislature finds and declares the following:

- (a) The best way to promote housing affordability is to increase the supply of housing by allowing more building.
- (b) New or renovated residential development does not increase the cost of housing. On the contrary, expanded residential development helps drive down cost by increasing supply.
- (c) Similarly, new commercial development spurs economic growth, which helps promote housing affordability.
- (d) There is no nexus between the creation or renovation of housing and housing affordability problems that would justify a mitigation policy seeking housing exactions from residential development.
- (e) Manipulating land use restrictions to encourage builders to voluntarily agree to housing exactions—such as offering density bonuses in exchange for deed-restricted set-asides—undermines the justification for the land use restrictions being waived and suggests those land use restrictions are unjustified.
- (f) Because building new or improved housing does not make housing less affordable, housing exactions are “an out-and-out plan of extortion” and unconstitutional. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).

Section 2: Definitions

For the purposes of this Act:

- (a) “Housing exaction” means any fee, non-monetary condition, allocation, or other concession imposed by a government entity on a project applicant to be used to provide restricted housing or offset restricted housing costs or other unmet housing needs as a condition of granting a permit or other approval for



the project. Housing exactions include density bonuses and other incentives designed to extract restricted housing commitments.

(b) “Restricted housing” means any housing unit that is subject to a deed restriction or other limitation on the price at which the unit can be bought, sold, or rented.

Section 3: Housing exactions banned

(a) No regulation, ordinance, resolution, condition of development, comprehensive plan, subdivision, direct or indirect overlay, or opt-in zoning shall impose a housing exaction on residential or commercial development.

(b) Nothing in this section shall apply to a restrictive covenant entered into between private parties, unless the restrictive covenant was imposed or required by a governmental entity.

Want to learn more about this model policy in your state?

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