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APPELLATE COURT DECISION INVALIDATING UNJUSTIFIED "AFFORDABLE HOUSING IN LIEU FEES" IS NOW FINAL

BIACC v. City of Patterson (2009) 171 Cal.App.4th 886

By [David P. Lanferman](#)

On June 17, 2009, the California Supreme Court denied the City of Patterson's petition for review of the Court of Appeals decision invalidating the City of Patterson's "affordable housing in lieu fees" and holding that the City violated a development agreement by demanding the new fees from the approved project. The Fifth Appellate District had initially issued its unanimous decision in January, holding that the City had failed to demonstrate that the amount of its new \$22,000 per market-rate home fee was reasonably related to any deleterious impacts on the community's need for affordable housing. The appellate court later [denied the City's petition for rehearing](#), slightly modified the text of its decision, and ordered the decision to be published in March. The Supreme Court's recent ruling means the decision now stands as "final" (at least as to the California judicial system).

The Supreme Court also denied several requests that the appellate court decision be "de-published." That denial means that the Court of Appeals decision remains published and citable as legal precedent. The decision has attracted much attention (and some concern) because it is one of the first to clearly hold that "affordable housing" exactions, or fees in-lieu of such subsidized-housing exactions, are subject to the "legal standards" generally applicable to other types of development fees and exactions. The court's decision indicates that "affordable housing" or "below-market-rate" housing exactions and fees may not be valid unless they are shown to be justified by evidence demonstrating a reasonable relationship between the "impacts" of new market rate housing (if any) and the amount of the fees or exactions imposed against a project to fund the community's "needs" for affordable housing -- just like other types of development fees and exactions. The decision may also have more far-reaching significance for other types of development fees and exactions for "soft infrastructure" and community amenities for which governments seek development contributions but which are not traditional "public facilities."

The prevailing plaintiffs will now be in position to seek recovery of refunds of all of the disputed fees paid "under protest" (plus interest,) and to seek recovery of their legal fees and costs from the City, as provided by the development agreement between the parties.

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