

COUNCIL AGENDA: 05-17-11
ITEM: 2.09

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Dennis Hawkins, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: 05-11-11

SUBJECT: SB 184 (LENO) – LAND USE: ZONING REGULATIONS

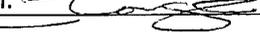
RECOMMENDATION

As recommended by the Rules and Open Government Committee on May 11, 2011 and outlined in the attached memo previously submitted to the Rules and Open Government Committee, approve a support position for SB 184 (Leno) – Land Use: Zoning Regulations.



Subject: SB 184 (Leno)
Land use: Zoning Regulations

Recommend Position: Support

CITY COUNCIL ACTION REQUEST			
Department: Housing	CEQA: N/A	Coordination: City Mgr/ City Atty/ Legis. Rep in Sacramento	CMO Approval:  Dept. Approval: 
RECOMMENDED ACTION:			
<ol style="list-style-type: none">1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, approve support for SB 184 (Leno) – Land use: zoning regulations.2. Recommend a one-week turnaround so that the City's Legislative Advocate in Sacramento can indicate support for SB 184 (Leno).			
BILL SYNOPSIS:			
SB 184 would add language to the State Planning and Zoning Law to give cities and counties the authority to choose to require the development of inclusionary housing as a condition of development, which may include the provision of rental units that would be affordable to lower-income families. SB 184 resolves a conflict between local inclusionary zoning ordinances and the State's Costa-Hawkins Rental Housing Act that have been brought to light as a result of the court decision in <i>Palmer v. the City of Los Angeles</i> . By resolving this conflict, if SB 184 passes, it would render <i>Palmer</i> ineffective, restoring local governments' ability to establish by ordinance inclusionary housing requirements for rental projects that limit rent increases upon changes in tenancy.			
IMPACTS TO CITY OF SAN JOSE:			
In 2010, the City Council passed a Citywide Inclusionary Housing Ordinance which will become effective no later than January 1, 2013. As a result of the <i>Palmer</i> appellate court decision, the City inserted language into the Ordinance which would suspend inclusionary obligations on rental housing projects until the <i>Palmer</i> decision is overturned, disproved, or depublished by a court, or modified by legislation. For consistency, although not required, the Agency Board elected to temporarily suspend rental inclusionary requirements in the current Inclusionary Housing Policy in effect in Redevelopment Project Areas as well. If SB 184 passes, the City's rental inclusionary housing requirements would take effect on January 1, 2013 along with the for-sale inclusionary housing requirements. Redevelopment areas will be governed by the City ordinance as of January 1, 2013, so the inclusionary housing ordinance would apply to both rental and for-sale housing projects City-wide. This bill will help produce more vitally-needed affordable homes for lower-income families.			
POLICY ALIGNMENT:			
This bill aligns with the Council-approved 2011 Legislative Guiding Principle: Protect Local Control			
SUPPORTERS/OPPONENTS:			
Supporters (partial list): California Rural Legal Assistance Foundation (sponsor), Western Center on Law & Poverty (sponsor), League of California Cities, Low-Income Investment Fund, Nonprofit Housing Association of Northern California, and Cities of Brea, Daly City, Santa Monica			
Opponents (partial list): Apartment Association, California Association of Realtors, Rental Property Association of Northern Alameda, and California Southern Cities Apartment Association of Greater Los Angeles.			
STATUS OF BILL:			
This bill was heard at the Senate Transportation and Housing Committee on May 3.			
FOR QUESTIONS CONTACT: LESLYE CORSIGLIA, 535-3851			



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: BILL ANALYSIS
SB 184 (Leno, 2011)
Inclusionary Housing/Zoning

DATE: April 27, 2011

SYNOPSIS

SB 184 would amend Government Code section 65850 of the State Planning and Zoning Law to add a new Subsection (g) that would specifically authorize counties and cities to "establish, as a condition of development, inclusionary housing requirements, which may require the provision of rental units affordable to, and occupied by, owners or tenants whose household incomes do not exceed the limits for lower income, very low income, or extremely low income households...."

The Bill specifies the Legislature's intent in adopting Subdivision (g) as superseding "any holding or dicta in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal. App.4th 1396, to the extent that the opinion in that case conflicts with that subdivision [g]."

SB 184 acknowledges that the police power of local agencies over zoning and related matters extends to requiring provision of affordable housing.

ANALYSIS

In 2009, the City Council adopted an inclusionary housing ordinance which will require in 2013 the construction of a specific percentage of moderate income units in for-sale housing projects, and also require the construction of a specified percentage of lower income units in rental housing projects. Because of the 2009 *Palmer* appellate court decision cited above, the City's inclusionary housing ordinance includes language suspending the sections of the ordinance requiring affordable rental housing until such time as there is a court decision or legislation overturning the *Palmer* decision. If you recall, *Palmer* invalidated a rental inclusionary housing requirement in a specific plan area in Los Angeles because it was preempted by the Costa-Hawkins Rental Housing Act (Civil Code section 1954.50-1954.535) (Costa-Hawkins) which requires that, absent a couple of very specific exceptions, no law can restrict rents from tenancy to tenancy.

HONORABLE MAYOR AND CITY COUNCIL
April 27, 2011
Subject: SB 184 (Inclusionary Housing/Zoning)
Page 2

SB 184 is an attempt to legislatively overturn the *Palmer* decision, and is very favorable to the defense and validity of the Council's inclusionary housing ordinance in that, if SB 184 is adopted:

- The rental requirements of the inclusionary housing ordinance would take effect on January 1, 2013 with the balance of the ordinance.
- For the first time, state law would specifically authorize counties and cities to adopt inclusionary housing ordinances as part of their zoning power and would clarify that the adoption of such ordinances is a valid exercise of the police power of local government.

SB 184 is a very positive move towards validating local government's police power to determine and adopt legislation promoting the type of housing that is needed within its jurisdiction. Although SB 184 is written clearly and unambiguously as to its intent, Costa-Hawkins' prohibition on rent restrictions from tenancy to tenancy includes language that would remain unchanged by SB 184. Costa-Hawkins prohibitions would still apply to tenancies "Notwithstanding any other provision of law." Civil Code section 1954.52(a). Although it is unlikely that a court would find that SB 184 has no effect on the scope of Costa-Hawkins, this issue would remain unless SB 184 is amended to remove the "notwithstanding any other provision of law" language from Costa-Hawkins.

RECOMMENDED CITY POSITION: STRONGLY SUPPORT

RICHARD DOYLE
City Attorney

By


VERA TODOROV
Senior Deputy City Attorney

cc: Debra Figone
Leslye Corsiglia
Joseph Horwedel