

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: June 24, 2013

TO: Honorable Members of the City Council

FROM: Gerry F. Miller *gfm*
Chief Legislative Analyst

Council File No. 13-0002-S97
Assignment No: 13-06-0558

SUBJECT: Resolution (Reyes-Wesson) to SUPPORT AB 1229 (Atkins).

CLA RECOMMENDATION: Adopt Resolution (Reyes-Wesson) to include in the City's 2013-2014 State Legislative Program SUPPORT for AB 1229 (Atkins) which would authorize cities and counties to establish inclusionary housing requirements which may require developers to designate residential units as affordable to owners or tenants whose household incomes do not exceed the limits for lower income, very low income, or extremely low income households.

SUMMARY

Resolution (Reyes-Wesson), introduced on June 14, 2013, states that inclusionary housing is a tool to overcome historical land use patterns that resulted in the exclusion of groups by income, race, and ethnicity. The Resolution describes that inclusionary housing ordinances require developers to ensure that a certain percentage of housing units are affordable to lower income households. *Palmer v. City of Los Angeles* effectively barred local governments from mandating rent restrictions on inclusionary units; as such restrictions were preempted by the Costa-Hawkins Rental Housing Act. The Resolution introduces AB 1229, which would authorize the legislative body of any city or county to establish inclusionary housing requirements by superseding the ruling in *Palmer v. City of Los Angeles*. Because the bill provides cities with local control over their affordable housing needs, the Resolution recommends support of AB 1229.

BACKGROUND

Inclusionary zoning is a land use provision that requires developers to designate a portion of units in new housing developments as affordable to lower income households. In the case *Palmer v. City of Los Angeles* (2009), the Second District California Court of Appeal held that the Cost-Hawkins Rental Housing Act prohibits local governments from mandating rent restrictions on inclusionary units in new rental housing developments, as the act gives landowners the right to set the initial rent level at the start of a tenancy.

AB 1229 would authorize cities and counties to establish inclusionary housing requirements, including provisions requiring affordable units. The bill further states the Legislature's intent to supersede *Palmer v. City of Los Angeles* and reaffirm the authority of local jurisdictions to enact and enforce inclusionary housing ordinances. According to the Los Angeles Housing Department (LAHD), the City's limited resources, cuts to federal Community Development Block Grant and HOME program, the dissolution of the Community Redevelopment Agency, and limited state housing bond resources requires that the City look for alternative solutions to address the vast need for affordable rental housing. In 2011, only 36 percent of the low-income units and 15 percent of very-low income units needed in the City were constructed. LAHD affirms that due to limited land and

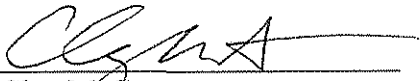
reduced financial resources, inclusionary housing is critical for developing affordable housing throughout the City. AB 1229 is identical to SB 184 (Leno), which the City supported in 2011. Among the supporters of AB 1229 is the League of California Cities, which supports the bill because it protects local control and will strengthen affordable housing stock.

DEPARTMENTS NOTIFIED

Los Angeles Housing Department
Planning Department

BILL STATUS

05/30/13 Passed Assembly. To Senate.
06/13/13 To Committee on Transportation and Housing.


Clay McCarter
Analyst

Attachment: 1. Resolution (Reyes-Wesson).
2. LAHD Bill Response Report

13-0002-897

RULES, ORDINANCES & INTERGOVERNMENTAL RELATIONS

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, inclusionary housing is a tool created to overcome historical land use patterns that resulted in the exclusion of groups by income, race, and ethnicity and helps to increase economic diversity within neighborhoods; and

WHEREAS, inclusionary housing ordinances require developers to ensure that a certain percentage of housing units in a new development be affordable to lower income households; and

WHEREAS, the ruling in the case *Palmer v. City of Los Angeles* (2009) effectively barred local governments from mandating rent restrictions on inclusionary units in new rental housing developments, as such restrictions were preempted by the Costa-Hawkins Rental Housing Act, which gives landowners the right to set the initial rent level at the start of a tenancy; and

WHEREAS, Assembly Bill 1229 (Atkins) would authorize the legislative body of any city or county to establish, as a condition of development, inclusionary housing requirements which may require the provision of residential 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; and

WHEREAS, enactment into law of AB 1229 would supersede the Second District California Court of Appeal ruling in the case *Palmer v. City of Los Angeles*; and

WHEREAS, AB 1229 enables each jurisdiction to enact their own local ordinances to address their affordable housing needs, empowering local governments with the tools to address the increasing need of affordable housing Statewide;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013-2014 State Legislative Program SUPPORT of AB 1229 (Atkins) which would authorize the legislative body of any city or county to establish, as a condition of development, inclusionary housing requirements which may require the provision of residential 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.

JUN 14 2013

PRESENTED BY

Ed P. Reyes
ED P. REYES
Councilmember, 1st District

ORIGINAL

JUN 14 2013

SECONDED BY

Herb J. Winkler

[Signature]
crm

LOS ANGELES HOUSING DEPARTMENT

BILL RESPONSE REPORT

HPEA ASSIGNED: <input type="checkbox"/> FC <input checked="" type="checkbox"/> CM <input checked="" type="checkbox"/> MR <input type="checkbox"/> RR <input type="checkbox"/> NT	BILL NUMBER/SUBJECT OR TITLE: AB1229	RECOMMENDED LAHD POSITION: (Justification under IV): <input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE <input type="checkbox"/> SUPPORT W/AMENDMENT <input type="checkbox"/> MONITOR <input type="checkbox"/> NOT AN LAHD ITEM
	BILL AUTHOR: Assemblymember Tony Atkins (D- San Diego)	
DATE OF ANALYSIS: June 12, 2013	DATE BILL INTRODUCED: February 22, 2013	

I. Please describe what section of law is proposed to be amended. Describe the impact this bill will have on the department or the City, its program(s), and/or its constituency (state existing law or practice, a summary of the effect the bill will have on existing department operations, etc.). If the bill has relevant legislative history, please indicate (i.e., indicate bill number and author if this is NOT the first session in which it has been introduced) In addition, please indicate when/what committee will hear the bill as well as who the chair is and who are the key membership of the committee.

AB 1229 proposes to amend Sections 65850 of the Government code, related to land use.

Specifically, AB 1229 would do the following:

Protect locally enacted inclusionary housing programs, which help ensure that a percentage of all new developments include homes affordable to lower income households.

AB 1229 would restore the ability of local governments to enact and/or implement inclusionary housing programs, by clarifying that the Costa-Hawkins Rental Housing Act **does not apply** to inclusionary housing programs. It would clarify that inclusionary zoning is not rent control because inclusionary zoning is means tested, restricted for a prescribed amount of time and it applies to a percent of all new construction. Rent control, on the other hand, is not means tested and it is not set-aside as affordable for a prescribed amount of time.

History

The *Palmer/Sixth Street Properties L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2009) (*Palmer*) created uncertainty and confusion for local government officials regarding the future viability of inclusionary zoning. In *Palmer*, the interpretation of the Costa-Hawkins Rental Housing Act changed the authority to enact inclusionary zoning programs.

Under Costa Hawkins, an owner or developer of rent controlled/stabilized housing is entitled to set the initial rental rate at the beginning of a tenancy, and raise the rent as permitted by the locality (subject to notice requirements). Under rent control/stabilization, rents can be set freely by the landlord when a new tenancy begins, but are subsequently controlled/stabilized throughout the tenancy, until the tenant voluntarily vacates or is evicted for cause.

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However, the *Palmer* court decision found that Costa Hawkins, which allows landlords to set the initial rental rate at the beginning of a tenancy, conflicts with the limit on rent levels for units required to be made affordable under a local inclusionary zoning program. Thus, since the inclusionary program at issue in *Palmer* required the developer to restrict the initial rents on a portion of the units in the development, that requirement was prohibited by Costa Hawkins. While there is ample support in Costa Hawkins' legislative history that it was never intended to apply to inclusionary units, the court refused to consider the legislative history. As a result, until clarified by the Legislature, local governments cannot mandate rent restrictions on inclusionary units in new rental housing developments.

Committee:

The bill passed out of the Assembly (41 AYES; 31 NOES) and is awaiting a hearing date in the Senate.

II. Give estimate of cost or savings to the department.

N/A

III. Recommended position and justification:

Support **Oppose** **Support w/Amendment** **Monitor** **Not
an LAHD Item**

Describe reasons for recommended position (include relevant existing City legislative policy, state whether this bill would enhance or hinder our programs/products/services, and/or any proposed amendments in underline and strike out format).

FISCAL (E.G., INCREASE/DECREASE IN FUNDING? IS THERE AN OPPORTUNITY FOR FUNDS THROUGH STATE GRANTMAKING?)

The City's limited resources and cuts to the federal Community Development Block Grant (CDBG), the HOME program, the dissolution of the Community Redevelopment Agency of the City of Los Angeles (CRA) and the near completion of the state housing bonds warrant the need to look for alternative ways of addressing the vast need for affordable rental housing. The City's ability for example, of offering density bonus incentives and land use concessions is one of the most fiscally sound mechanisms by which both developers and the City's interests can be mutually met. Allowing localities to pursue and implement inclusionary housing programs is critical to address the increasing need of affordable housing.

In addition, local inclusionary zoning ordinances are vital tools for localities such as Los Angeles, as the City plans and works to meet the need for rental housing at all affordability levels as stated in the City's current Housing Element. In 2011, the need for affordable housing far outpaced the supply. Only 36% of low-

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income units needed and 15% of very low-income units needed in the City of Los Angeles were built.

With limited land and dwindling financial resources, the option to create/implement an inclusionary housing program is critical for developing and distributing affordable housing throughout the City as well as housing lower income groups that may not otherwise afford market-rate rentals in higher income neighborhoods.

PROGRAMMATIC (I.E., HOW DOES THIS CHANGE WHAT WE CURRENTLY DO? ARE WE EXPECTED TO DO SOMETHING WE DON'T ALREADY DO? DISCUSS WHETHER THIS BILL WOULD ENHANCE OR HINDER OUR PROGRAMS/PRODUCTS/SERVICES.)

This proposed legislation will supersede the *Palmer* ruling thereby clarifying any ambiguity created by the ruling. Up until recently, in the City of Los Angeles, only specified sector(s) of the City have had inclusionary-type programs in place (e.g., Central City West Specific Plan Area, the Redevelopment Project Areas).

AB 1229 seeks to amend the California Government Code with a provision that would provide cities, including charter cities, unequivocal permission to create mixed income housing ordinances. The bill impacts new multi-family developments; the inclusionary zoning authority applies to new rental properties.

AB 1229 would allow localities to address their locally-crafted responses to their respective demands for rent-restricted units assisted or otherwise financed/subsidized by density bonus mechanisms.

IV. Interested Parties:

Indicate any interest other departments or organizations may have on the bill (e.g., SCAG position, Legal Aid, etc.) Also, list any contacts you made in preparing this information

SUPPORTERS

California Rural Legal Assistance Foundation [CO-SPONSOR]
Non-Profit Housing Association of Northern California
[CO-SPONSOR]
San Diego Housing Federation [CO-SPONSOR]
Western Center on Law and Poverty [CO-SPONSOR]
American Planning Association, California Chapter
BRIDGE Housing
Cabrillo Economic Development Corporation
California State Association of Counties
Cities Association of Santa Clara County
Cities of Burbank, Chico, Cloverdale, Danville, Davis,

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Emeryville, Fort Bragg, Lathrop, Pasadena, San Jose, San Mateo, Santa Monica, and Wasco
City and County of San Francisco
Council of Community Housing Organizations
EAH Housing
East Bay Housing Organizations
First Place for Youth
Greenbelt Alliance
Housing Leadership Council of San Mateo County
Law Foundation of Silicon Valley
Leading Age California
League of California Cities
League of Women Voters of California
League of Women Voters of Marin County
Los Angeles County Division, League of California Cities
Marin Partnership to End Homelessness
Marin Workforce Housing Trust
MidPen Housing
Mercy Housing
Move LA
Sacramento Housing Alliance
One individual letter

OPPOSITION

Apartment Association, California Southern Cities
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
California Association of Realtors
California Building Industry Association
East Bay Rental Housing Association
GH Palmer Associates
NorCal Rental Property Association
San Diego County Apartment Association
San Francisco Association of Realtors
Santa Barbara Rental Property Association