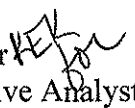


**REPORT OF THE  
CHIEF LEGISLATIVE ANALYST**

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DATE: December 5, 2013

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Gerry F. Miller   
Chief Legislative Analyst

Council File No:  
Assignment No: 13-11-0952

SUBJECT: Housing and Community Investment Department Recommendations for the 2013-2014 Federal and State Legislative Programs.

CLA RECOMMENDATIONS:

1. Adopt the attached Resolution to include in the City's 2013-2014 Federal Legislative Program SUPPORT for S. 1442 (Cantwell), the Improving the Low Income Housing Tax Credit Rate Act.
2. Adopt the attached Resolutions to include in the City's 2013-2014 State Legislative Program SUPPORT for legislation or administrative action that would:
  - a. Authorize inclusionary housing; and
  - b. Ensure Cap-and-Trade proceeds are dedicated for their intended purpose.

SUMMARY

The Housing and Community Investment Department (HCID) has provided several proposals for inclusion in the 2013-2014 Federal and State legislative programs. For the Federal Legislative Program, HCID recommends support for S. 1442 (Cantwell), which would eliminate the floating tax credit rate used by the Low-Income Housing Tax Credit (LIHTC) program and make permanent a nine percent and four percent minimum rate. For the State Legislative program, HCID recommends support for inclusionary housing and support for cap-and-trade proceeds being dedicated for their intended purposes. We have attached Resolutions supporting these proposals. HCID additionally recommends support for SB 391 (DeSaulnier), which creates a permanent source of funding for affordable housing. Since the City has previously adopted a support position for this bill in the 2013-2014 State Legislative Program (C.F. 13-0002-S40), no further action is necessary. HCID further requests that the City support, with the option to recommend amendments, proposed redevelopment bills that include an affordable housing set aside. Based on several factors, we recommend that this proposal not be included in the City's State Legislative Program.

## BACKGROUND

### *Federal*

#### **S. 1442 (Cantwell), the Improving the Low Income Housing Tax Credit Rate Act**

Established under the Tax Reform Act of 1986, the Low-Income Housing Tax Credit (LIHTC) is used to incentivize the development of affordable rental housing for low-income households. The LIHTC provides investors with a reduction in tax liability in exchange for providing capital to develop affordable rental housing. The tax credit is designed to subsidize either 30 percent or 70 percent of the low-income unit costs. Congress originally set the tax credit rate at four percent (for the 30 percent subsidy) and nine percent (for the 70 percent subsidy) in the first year of the law, with the out-year credit rates determined by a floating rate based on federal borrowing costs. To ensure a stable tax credit, in 2008 Congress set the annual rate on the 70 percent subsidy at a flat nine percent for properties placed in service by the end of 2013. Congress further extended the nine percent credit to apply to credit allocations made before January 1, 2014. Congress did not provide a flat rate for the 30 percent subsidy. Should Congress fail to extend the flat nine percent minimum rate, the tax credit would revert to the prior used floating rate, which would lower the value of the tax credit.

S. 1442 would end the option of the floating LIHTC tax credit and make permanent the temporary nine percent minimum tax credit and create a new four percent minimum tax credit for the 30 percent subsidy. According to HCID, this bill would potentially serve as a significant financing source for constructing additional affordable housing in the City. S. 1442 is a reintroduction of S. 1989, a bill from 2011 that failed to move out of committee. An attached Resolution supports S. 1442.

### *State*

#### **Inclusionary Housing/Palmer Fix**

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 Costa-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. In June 2013 the City took a SUPPORT position for AB 1229 (C.F. 13-0002-S97), which would state 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. AB 1229 was recently vetoed by the Governor. According to HCID, the City's limited resources, cuts to federal Community Development Block Grant and HOME program, the dissolution of the CRA, and limited state housing bond resources requires that the City look for alternative solutions to address the vast need for affordable rental housing. We have attached a Resolution which supports legislation or administrative action that would carry out the policy described in AB 1229.

### **Cap-and-Trade Proceeds**

AB 32, the Global Warming Solutions Act of 2006, legislated a goal of reducing the state's greenhouse gas emissions to 1990 levels by 2020. To meet this goal, AB 32 established a cap-and-trade program, whereby emissions are capped and companies are required have an emissions allowance for every metric ton of CO<sub>2</sub> emitted. Emission allowances can be allocated by the state, bought from the state at auction, traded, or created through offset projects. The state has raised considerable revenue from these cap-and-trade auctions, which are deposited into the Greenhouse Gas Reduction Fund. The Enacted 2013-2014 State Budget includes a proposal by the Governor to loan \$500M in cap-and-trade auction proceeds to the General Fund. HCID reports that this loan diverts funds away from the intended use of the cap-and-trade proceeds to reduce greenhouse gas emissions. Should these proceeds remain within their intended use, such greenhouse gas reductions could be realized through weatherization retrofits and affordable housing development near transit. An attached Resolution supports the intended use of cap-and-trade proceeds.

### **SB 391 (DeSaulnier), the California Homes and Jobs Act**

The State of California has a variety of affordable housing programs, notably the Multifamily Housing Program, Emergency Housing Assistance Program, CalHome Program, and California Homebuyer Down Payment Assistance program. The main funding source for these programs has been general obligation bonds, notably Proposition 46 and Proposition 1C. These funds have financed the construction, rehabilitation, and preservation of affordable housing. The California Department of Housing and Community Development (HCD) has awarded a majority of the funds made available under these funding sources, leaving limited resources available for affordable housing. Until 2011, the Community Redevelopment Law required redevelopment agencies to set aside 20 percent of all tax increment revenue for affordable housing. Due to the elimination of redevelopment agencies, this source of funding is no longer available, further limiting state resources for affordable housing.

SB 391, the California Homes and Jobs Act of 2013, would impose a per document fee of \$75 to be paid at the time of the recording of every real estate-related document, excluding documents related to the sale of property. Our office notes that the process of refinancing includes the recording of a variety of documents that would be subject to the proposed fee. Notably, a family with a primary loan and a line of credit refinancing in order to lower their payments would need to record at a minimum four documents, adding \$300 to the cost of the refinance. The City of Los Angeles and other jurisdictions would be exempt from paying this fee under the Government Code. The funds raised through this new fee would be deposited in the California Homes and Jobs Trust Fund and be appropriated by the Legislature for the development, acquisition, rehabilitation, and preservation of affordable housing. Proponents of SB 391 project that the new \$75 fee will raise \$500M annually for state investment in affordable home production and leverage an additional \$2.78 billion in federal, local, and bank investment. With the elimination of redevelopment agencies and the reduction in the City's Community Development Block Grant (CDBG) allocation, SB 391 could provide the City with a needed source of affordable housing funding.

Our office notes that SB 391 does not allocate funds to particular programs, uses, or jurisdictions, rather, the Legislature is charged with determining the allocation. By not including a formula or other language that would ensure that affordable housing investment was made in Los Angeles, there is a chance that revenue raised through documentary filings at the County of Los Angeles could be spent elsewhere in the State. Because SB 391 would result in a change in State taxes, it requires a two-thirds vote for passage. The City took a SUPPORT with SEEK AMENDMENTS position for this bill in May 2013. The amendments sought would be to include cities in the development of the funding allocation formula to ensure equitable distribution of funds. The bill is currently pending in the Assembly Appropriations Committee. As the City has already taken a position on this bill, no further action is necessary.

### **Affordable Housing Tax Increment**

HCID recommends that the City add to its State Legislative Program a support position with the option to recommend amendments to proposed redevelopment bills that include an affordable housing set aside. Under the former state redevelopment law, the City was required to dedicate 20 percent of its property tax increment for affordable housing, to which the City provided an additional five percent, for a total of 25 percent. This resulted in between \$25M and \$50M in property tax increment funding each year for affordable housing. With the dissolution of the CRA, this source of funding was eliminated. Proposed legislation in SB 1 (Steinberg) and AB 1080 (Hueso) create the next versions of redevelopment and include a 25 percent tax increment set aside for affordable housing. We recommend not including this position in the City's Legislative Program for several reasons. The City does not require State legislation to dedicate property tax increment for affordable housing. The amount dedicated each year could be determined during the City's budget process, or the City could set its own policy that would dictate affordable housing funding. This would provide the City with the flexibility and freedom to fund affordable housing and meet the demands of specific needs in Los Angeles, rather than being locked into a state-mandated formula.

#### BILL STATUS S. 1442

08/01/13 Introduced, referred to the Committee on Finance.

#### BILL STATUS SB 391

08/30/13 Hearing postponed by committee.

08/30/13 Referred to Appropriations suspense file.

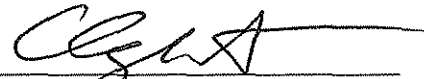
08/15/13 Passed Committee on Labor and Employment. To Committee on Appropriations.

08/12/13 Passed Committee on Housing and Community Development.

08/08/13 Amended. Re-referred to Committee on Housing and Community Development.

06/14/13 In Assembly. Referred to Committees on Housing and Community Development and Labor and Employment.

05/29/13 Passed Senate. To Assembly.



Clay McCarter  
Analyst

- Attachments:
1. Resolution supporting S. 1442.
  2. Resolution supporting inclusionary housing.
  3. Resolution supporting cap-and-trade proceeds intended use.

## 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, the Tax Reform Act of 1986 created the Low-Income Housing Tax Credit (LIHTC), which is used to incentivize the development of affordable rental housing for low-income households; and

WHEREAS, the tax credit is designed to subsidize either 30 percent or 70 percent of the low-income unit costs; and

WHEREAS, Congress originally set the tax credit rate at four percent (for the 30 percent subsidy) and nine percent (for the 70 percent subsidy) in the first year of the law, with the out-year credit rates determined by a floating rate based on federal borrowing costs; and

WHEREAS, to ensure a stable tax credit, in 2008 Congress set the annual rate on the 70 percent subsidy at a flat nine percent for properties placed in service by the end of 2013 and further extended the nine percent credit to apply to credit allocations made before January 1, 2014; and

WHEREAS, should Congress fail to extend the flat nine percent minimum rate, the tax credit would revert to the prior used floating rate based on federal borrowing costs, which would lower the value of the tax credit and serve as a disincentive to construct affordable housing; and

WHEREAS, S. 1442 (Cantwell) would end the option of the floating LIHTC tax credit and make permanent the temporary nine percent minimum tax credit and create a new four percent minimum tax credit for the 30 percent subsidy, thereby eliminating the financial risk of the floating rate system and creating stability and predictability in the affordable housing community; and

WHEREAS, this bill will potentially serve as a significant financing source for constructing additional affordable housing in the City, whose need has never been more in demand;

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 Federal Legislative Program SUPPORT for S. 1442 (Cantwell), which would eliminate the floating rate used by the Low-Income Housing Tax Credit (LIHTC) program and make permanent a nine percent and four percent minimum rate.

## 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 ordinances require developers to retain a certain percentage of housing units in a new development as affordable to lower income households; and

WHEREAS, the case *Palmer v. City of Los Angeles* (2009) prevented 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, in June 2013 the City took a support position for AB 1229 (C.F. 13-0002-S97) which would state 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; and

WHEREAS, the Governor recently vetoed AB 1229; and

WHEREAS, with limited land and financial resources, the option to create an inclusionary housing program is critical for developing and distributing affordable housing throughout the City; and

WHEREAS, based on the acute need for affordable housing, the City of Los Angeles should continue to support the policies of AB 1229;

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 for legislation or administrative action that 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.

## 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, AB 32, the Global Warming Solutions Act of 2006, established a goal of reducing the State of California's greenhouse gas emissions to 1990 levels by 2020. To meet this goal, AB 32 established a cap-and-trade program, whereby emissions are capped and companies are required have an emissions allowance for every metric ton of CO2 emitted; and

WHEREAS, emission allowances can be allocated by the state, bought from the state at auction, traded, or created through offset projects; and

WHEREAS, the state has raised considerable revenue from these cap-and-trade auctions, which are deposited in the Greenhouse Gas Reduction Fund; and

WHEREAS, the Enacted 2013-2014 State Budget includes a proposal by the Governor to loan \$500M in cap-and-trade auction proceeds to the General Fund; and

WHEREAS, these funds were intended to be used to reduce greenhouse gas emissions; and

WHEREAS, such reductions could be realized through weatherization retrofits and affordable housing development near transit in the City of Los Angeles;

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 for legislation or administration action to ensure cap-and-trade proceeds are dedicated for their intended purpose, to fund programs and strategies that reduce greenhouse gas emissions.