

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: May 6, 2016

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

FROM: Sharon M. Tso 
Chief Legislative Analyst

Council File No. 15-0002-S157
Assignment No: 16-04-0363

SUBJECT: Resolution (O'Farrell-Huizar) to SUPPORT AB 2502, which would authorize the City to establish, as a condition of development, inclusionary housing requirements.

CLA RECOMMENDATION: Adopt attached Resolution to include in the City's 2015-16 State Legislative Program SUPPORT for AB 2502 (Mullin and Chiu), which authorizes the legislative body of any city, county, or city and county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements.

SUMMARY

Resolution (O'Farrell-Huizar), introduced on April 13, 2016, describes the ruling in the case *California Building Industry Association v. City of San Jose* which allows cities and counties to require developers to provide affordable housing units in developments whose units will be offered for-sale. The Resolution adds that the ruling in the case *Palmer v. City of Los Angeles* has prevented cities from using inclusionary zoning in rental developments. Citing that the City of Los Angeles continues to face a shortage of affordable housing, which forces many of the City's residents to pay more than 30 percent of their income towards rent, the Resolution points to AB 2502 as a solution. AB 2502 authorizes inclusionary housing requirements for rental housing developments and also addresses the Legislature's intent in regard to the *Palmer* decision. As the bill will supersede the *Palmer* ruling and give cities the right to enact their own local ordinances to address their affordable housing needs, the Resolution seeks support of AB 2502.

BACKGROUND

Inclusionary zoning is a land use provision that allows cities and counties to establish a requirement that developers designate a portion of units in new housing developments as affordable to lower income households. In June 2015, the California Supreme Court ruled in the case *California Building Industry Association v. City of San Jose* that cities and counties may require developers to provide affordable housing units in developments whose units will be offered for-sale. The Court upheld the inclusionary housing ordinance adopted by the City of San Jose and stated that inclusionary housing laws are similar to local regulations controlling housing size and density. This ruling allows inclusionary rules to be established for for-sale units.

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 landlords the right to set the initial rent level at the start of a tenancy. One solution for allowing the City to set inclusionary requirements for rental units is for the State legislature to approve legislation that allows

inclusionary housing in rental developments. If allowed, inclusionary housing is a tool cities can use to provide greater amounts of affordable housing.

AB 2502 will permit cities and counties to establish inclusionary housing requirements. This bill authorizes the legislative body of any city, county, or city and county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements. The bill further provides the intent of the Legislature to reaffirm the authority of local jurisdictions to enact and enforce inclusionary zoning. This legislation would allow the City of Los Angeles to develop and implement a local inclusionary housing ordinance for rental housing.

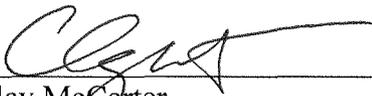
Inclusionary Zoning is mentioned in the City's Comprehensive Homeless Strategy (C.F. 15-1138-S1) as one of several potential strategies that could facilitate the development of more housing which will reduce the incidence of homelessness in the City. The City has taken a support position on inclusionary housing legislation twice before, in 2011 (SB 184) and 2013 (AB 1229). AB 1229 was passed by the Legislature, but was vetoed by the Governor. In his veto message, Governor Brown stated that requiring developers to include affordable units in developments will make it difficult to attract development in low and middle income communities.

DEPARTMENTS NOTIFIED

Housing and Community Investment Department
Planning Department

BILL STATUS

04/27/16	Passed Committee on H. & C.D.
04/19/16	Re-referred to Com. on H. & C.D.
04/18/16	Amended.
04/14/16	Passed Committee on L. GOV.
03/30/16	Amend and re-refer to Com. on L. GOV.
03/08/16	Referred to Coms. on L. GOV. and H. & C.D.
02/19/16	Introduced.


Clay McCarter
Analyst

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 ensure that a certain percentage of housing units in a new development be affordable to lower income households; and

WHEREAS, in June 2015, the California Supreme Court ruled in the case *California Building Industry Association. v. City of San Jose* that cities and counties may require developers to provide affordable housing units in developments whose units will be offered for-sale; and

WHEREAS, while this ruling permits the use of inclusionary zoning in for-sale developments, the ruling in the case *Palmer v. City of Los Angeles* (2009) has prevented cities from using inclusionary zoning in rental developments; and

WHEREAS, the City of Los Angeles continues to face a shortage of affordable housing, which forces many of the City's residents to pay well more than 30 percent of their gross income towards rent, a tremendous financial burden; and

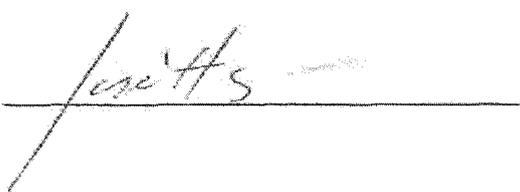
WHEREAS, on May 31, 2011 and June 25, 2013, the Los Angeles City Council adopted resolutions in support of SB 184 (Leno) and AB 1229 (Atkins), respectively, which would have authorized the legislative body of any city or county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements; and

WHEREAS, currently pending in the California State Assembly is AB 2502 (Mullin and Chiu), a bill that would authorize the legislative body of any city, county, or city and county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements; and

WHEREAS, this bill will supersede the *Palmer* ruling and give cities the right to enact their own local ordinances to address their affordable housing needs;

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 2015-2016 State Legislative Program SUPPORT for AB 2502 (Mullin and Chiu), a bill that would authorize the legislative body of any city, county, or city and county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements.

PRESENTED BY: 
MITCH O'FARRELL
Councilmember, 13th District

SECONDED BY: 


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