



Berkeley City Council

CONSENT CALENDAR  
May 3, 2011

To: Honorable Mayor and Members of the City Council  
From: Councilmembers Jesse Arreguín, Kriss Worthington, and Max Anderson  
Subject: Supporting Senate Bill 184, Amending State Law to Allow Local Governments to Create Inclusionary Housing Requirements

RECOMMENDATION:

Adopt a Resolution supporting Senate Bill 184, which amends state law to clarify that a legislative body of any city or county can adopt ordinances to establish inclusionary housing requirements as a condition of development.

BACKGROUND:

Berkeley adopted its Inclusionary Ordinance in 1986. Since 1986 and 2009 when the *Palmer* decision went into effect, the Inclusionary Ordinance created hundreds of new permanently affordable rental units in new projects helping address the critical need for affordable housing in our community and promoting economically diverse neighborhoods. Inclusionary zoning has also been a powerful tool in creating affordable housing in 150 other jurisdictions throughout California.

On October 22, 2009, the California State Supreme Court denied review of the 2nd Appellate District Court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles (Palmer)* which held that the Costa-Hawkins Act's pre-emption of permanent rent ceilings on rental units made inclusionary policies for rental housing projects throughout the state unenforceable. This decision severely challenges our ability to provide affordable housing at a time when people need it the most. Because the *Palmer* decision is the law in the State of California, it is critical that the State Legislature amend the law to clarify that local governments can adopt inclusionary housing requirements.

Senate Bill (SB) 184, introduced by Senator Mark Leno, would amend state law to amend Section 65850 of the Government Code to clarify that a legislative body of any city or county can adopt ordinances to establish as a condition of development, inclusionary housing requirements which may require the provision of residential units affordable to owners or tenants whose households incomes do not exceed the limits for lower income, very low income, or extremely low income households specified in Sections 50079.5, 50105 and 50106 of the Health and Safety Code.

Additionally, the bill declares that it supersedes the *Palmer v. City of Los Angeles* decision to the extent that decision conflicts with the Government Code Section 65850, which authorizes local governments to establish inclusionary requirements.

FINANCIAL IMPLICATIONS:

NONE

CONTACT PERSONS:

Jesse Arreguín, Councilmember, District 4	981-7140
Kriss Worthington, Councilmember, District 7	981-7170
Max Anderson, Councilmember, District 3	981-7130

Attachments:

1. Resolution
2. Copy of Senate Bill 184

RESOLUTION NO. ##,###-N.S.

SUPPORTING SENATE BILL 184 WHICH AUTHORIZES THE LEGISLATIVE BODY  
OF ANY CITY OR COUNTY TO ADOPT ORDINANCES ESTABLISHING  
INCLUSIONARY HOUSING REQUIREMENTS AS A CONDITION OF DEVELOPMENT

WHEREAS, in 1986, the City of Berkeley adopted its Inclusionary Ordinance, which requires that developers set aside 20% of the units in a project of 5 units or more as affordable to low and very low income individuals; and

WHEREAS, since its adoption, the Inclusionary Ordinance created hundreds of permanently affordable units in new projects not only addressing the critical need for affordable housing in Berkeley, but also creating economically diverse neighborhoods; and

WHEREAS, inclusionary zoning has also been a powerful tool in creating affordable housing in 150 other jurisdictions throughout California; and

WHEREAS, on October 22, 2009, the California State Supreme Court denied review of the 2nd Appellate District Court's decision in *Palmer/Sixth Street Properties v. City of Los Angeles (Palmer)*; and

WHEREAS, the decision found that because the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50-1954.535) prohibits permanent rent restrictions on residential rental units, that inclusionary zoning policies are unenforceable since they permanently control rent levels for inclusionary units so that they are affordable to low income individuals; and

WHEREAS, the *Palmer* decision severely challenges our ability to provide needed affordable housing to people throughout the state, and because the *Palmer* decision is the law in the State of California, it is critical that the State Legislature amend the law to clarify that local governments can adopt inclusionary housing requirement; and

WHEREAS, Senate Bill (SB) 184, introduced by Senator Mark Leno, would amend 65850 of the Government Code to clarify that a legislative body of any city or county can adopt ordinances to establish as a condition of development, inclusionary housing requirements; and

WHEREAS, SB 184 is critically important to ensure that local governments can create affordable housing for people throughout the state at a time when they need it the most.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby expresses its support for Senate Bill 184, introduced by Senator Mark Leno.

BE IT FURTHER RESOLVED that copies of this Resolution be sent to Senator Mark Leno, Senate President Pro Tem Darrell Steinberg, Senator Loni Hancock, Assembly Speaker John A. Perez and Assemblymember Nancy Skinner.

AMENDED IN SENATE MARCH 24, 2011

**SENATE BILL**

**No. 184**

**Introduced by Senator Leno**

February 7, 2011

An act to amend Section 65850 of Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 184, as amended, Leno. Land use: zoning regulations.

The Planning and Zoning Law authorizes ~~a~~ *the legislative body of any city or county to adopt ordinances regulating zoning within its jurisdiction, as specified.*

This bill would *additionally authorize the legislative body of any city or county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements, as specified, and would declare the intent of the Legislature in adding this provision. It would also make a technical, nonsubstantive change in that law.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 65850 of the Government Code is
- 2 amended to read:
- 3 65850. The legislative body of any county or city may, pursuant
- 4 to this chapter, adopt ordinances that do any of the following:
- 5 (a) Regulate the use of buildings, structures, and land as between
- 6 industry, business, residences, open space, including agriculture,

- 1 recreation, enjoyment of scenic beauty, use of natural resources,
- 2 and other purposes.
- 3 (b) Regulate signs and billboards.
- 4 (c) Regulate all of the following:
- 5 (1) The location, height, bulk, number of stories, and size of
- 6 buildings and structures.
- 7 (2) The size and use of lots, yards, courts, and other open spaces.
- 8 (3) The percentage of a lot which may be occupied by a building
- 9 or structure.
- 10 (4) The intensity of land use.
- 11 (d) Establish requirements for off-street parking and loading.
- 12 (e) Establish and maintain building setback lines.
- 13 (f) Create civic districts around civic centers, public parks,
- 14 public buildings, or public grounds, and establish regulations for
- 15 those civic districts.
- 16 (g) *Establish, as a condition of development, inclusionary*
- 17 *housing requirements, which may require the provision of*
- 18 *residential units affordable to, and occupied by, owners or tenants*
- 19 *whose household incomes do not exceed the limits for lower*
- 20 *income, very low income, or extremely low income households*
- 21 *specified in Sections 50079.5, 50105, and 50106 of the Health and*
- 22 *Safety Code.*
- 23 *SEC. 2. The Legislature declares its intent in adding*
- 24 *subdivision (g) to Section 65850 of the Government Code pursuant*
- 25 *to Section 1 of this act, to supersede any holding or dicta in*
- 26 *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles (2009)*
- 27 *175 Cal.App.4th 1396, to the extent that the opinion in that case*
- 28 *conflicts with that subdivision.*

