



Agenda Report

TO: City Council

April 17, 2001

THROUGH: Legislative Committee

FROM: City Manager

SUBJECT: Oppose Senate Bill 910 (Dunn) *Housing Elements: Fines, Penalties, and Lawsuits/Seizure of Local Gas Tax Funds.*

RECOMMENDATION

It is recommended that the City Council:

1. Oppose Senate Bill 910 (Dunn) *Housing Elements: Fines, Penalties, and Lawsuits/Seizure of Local Gas Tax Funds*; and
2. Authorize the Mayor to send letters to the appropriate authorities stating Pasadena's position

BACKGROUND

Existing law requires cities and counties to prepare and adopt a General Plan for its jurisdiction that contains certain mandatory elements, including a housing element. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.

Cities and counties must revise their housing elements every five years, following a staggered statutory schedule. Before each revision, the regional council of governments (COG), in conjunction with the Department of Housing and Community Development (HCD), prepares a regional housing needs assessment (RHNA) and allocates to each jurisdiction in the region a share of the housing need for all income categories.

Prior to adopting or amending a housing element, a local government must submit a draft to HCD for review. The HCD is required to report within 60 days its written findings as to whether or not the draft element or amendment substantially complies with the law. The local jurisdiction may then adopt the element. Within 120 days of the final adoption of a housing element or amendment, HCD is required to review the final document and report its finding as to whether the housing element complies with state law.

Either the Attorney General or a private party may bring suit to enforce housing element law. In any such legal action, there is a rebuttable presumption that a jurisdiction's housing element is valid if HCD has found that the element substantially complies with state law.

On February 23, 2001, Senator Dunn introduced Senate Bill 910 (Dunn), *Housing Elements: Fines, Penalties, and Lawsuits/Seizure of Local Gas Tax Funds*, which would:

- 1) Provide that in any action filed on or after January 1, 2002, challenging the validity of a housing element, there shall be a rebuttable presumption of nonvalidity of the housing element or amendment if the HCD has found that the element or amendment does not substantially comply with state law;
- 2) Require a court that finds a local government's housing element is not in substantial compliance with the state law governing housing elements, levy a penalty not to exceed \$1,000 per unit of the total projected housing need for the jurisdiction, and award the plaintiff attorney's fees and costs;
- 3) Require the Controller to reduce by specified percentages, 20 to 60 percent, the monthly allocation of funds disbursed under various gas tax laws to any city, county, or city and county whose revision of its housing element has not been determined to be in substantial compliance with state law and to redistribute the money in the following month.

The City of Pasadena's current housing element was approved in 1989. Although cities normally are required to revise their housing elements every five years, as previously discussed, the housing need must first be determined in a RHNA prepared by the COG (e.g., Southern California Association of Governments). Because the state delayed funding for the RHNA for several years, the statutory deadline for submitting housing elements was delayed until December 31, 2000. Therefore, the RHNA for jurisdictions of SCAG was not approved in draft by HCD until late 1999, and the final RHNA has not yet been approved. Due to the relatively short time given for cities to submit their elements, a majority of cities, including Pasadena, did not submit them by the deadline. However, the City of Pasadena is now completing the draft housing element and reviewing it with City commissions. The element has been prepared in conjunction with the proposed inclusionary housing program. The completed element will incorporate Council decisions on the inclusionary housing program, which was presented to Council on April 2, 2001 and was continued to April 23, 2001.

The City of Pasadena opposes SB 910, because it elevates HCD opinion above the opinion of a judge in determining whether an element substantially complies with state law and subjects local governments to varying or even personal interpretations of the law. The ability of the court to halt development is sufficient remedy for non-compliance with housing element law and monetary penalties are therefore inappropriate and unnecessary.

The League of California Cities opposes this bill because it takes away scarce transportation dollars from local governments if it is determined they are out of compliance by HCD.

On April 2, 2001, this bill passed the Senate Housing and Community Development Committee and was referred to the Senate Appropriations Committee.