

Agenda Report

November 21, 2011

TO: Honorable Mayor and City Council

THROUGH: Legislative Policy Committee (September 28, 2011)

FROM: Housing Department

SUBJECT: ADOPTION OF RESOLUTION IN SUPPORT OF SB 184 TO PROTECT LOCAL AFFORDABLE INCLUSIONARY HOUSING PROGRAMS

RECOMMENDATION:

It is recommended that the City Council:

- 1) Find that the recommended action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines per Section 15061 (b)(3); and
- 2) Adopt a resolution (Exhibit A) in support of Senate Bill 184 to protect local affordable inclusionary housing programs.

BACKGROUND:

Senate Bill 184 (Leno) authorizes local legislative bodies to adopt inclusionary housing requirements as a condition of development. Inclusionary housing requirements are also known as inclusionary zoning or mixed-income zoning, and require that new housing development include a percentage of affordable units.

Inclusionary housing programs have been in place in California for decades. The City of Pasadena's inclusionary housing ordinance was adopted in 2001. However, in 2009, the California Court of Appeals decided in the *Palmer/Sixth Street Properties L. P. v. City of Los Angeles* case that forcing the Palmer development project to provide affordable rental units pursuant to City of Los Angeles inclusionary housing provisions violated the 1995 Costa-Hawkins Rental Housing Act ("Costa-Hawkins"). Costa-Hawkins provides, among other things, that "...an owner of residential real property may establish the initial rental rate for a dwelling or a unit..." The *Palmer* court held for the

first time that the state's Costa-Hawkins rent control law prohibits local governments from creating affordable rental housing through local inclusionary programs. The court decision had a direct impact on the Palmer project and the City of Los Angeles, and created uncertainty and confusion for other jurisdictions with rental inclusionary programs.

Costa-Hawkins eliminated strict rent control. In general, rent control was a response to rapid inflation of rents; applies to all units except for new construction; and the rent restrictions are for an unlimited duration of time. In contrast, most of the inclusionary housing programs throughout the state over the last 40 years were responses to exclusionary zoning practices (e.g., income or race exclusion); apply to only a percentage of new units; and the rent restrictions are for a limited period. Currently, 140 cities and counties in California have inclusionary housing programs. Of these, 75 were adopted after Costa-Hawkins (1995). California Redevelopment Law, Density Bonus Law, and the Mello Act contain inclusionary housing provisions. The City of Pasadena inclusionary housing program requires that new residential units set aside 15% of the units as affordable housing. This program has successfully resulted in the development of 281 affordable units since 2001.

SB 184 restores the ability of local government to enact inclusionary housing programs by clarifying that Costa-Hawkins does not apply to such programs. It would restore local land use power. Pursuant to SB 184, the legislative body of any county or city may adopt ordinances that 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.

The Legislative Policy Committee, at its regular meeting of September 28, 2011, supported the staff recommendation and directed staff to forward the recommendation to City Council for consideration.

COUNCIL POLICY CONSIDERATION:

The proposed action is consistent with the City's General Plan - Housing Element and the Five-Year Consolidated Plan. It also supports and promotes the quality of life and the local economy -- a goal of the City Council's Strategic Objectives.

ENVIRONMENTAL ANALYSIS:

The action proposed herein is exempt from the California Environmental Quality Act (CEQA), pursuant to State CEQA Guidelines Section 15061(b)(3). The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty

that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

The proposed action is the adoption of a resolution in support of SB 184 related to local affordable inclusionary housing programs. Adopting such a resolution does not commit the City to undertake any particular project at this time.


FISCAL IMPACT:

There is no anticipated fiscal impact as a result of this action and there will be no indirect or support cost requirements.

Respectfully submitted,


WILLIAM K. HUANG
Housing Director

Prepared by:


JAMES WONG
Senior Project Manager

Approved by:


MICHAEL J. BECK
City Manager

Exhibit A
SB 184 Resolution

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF PASADENA, CALIFORNIA
IN SUPPORT OF SENATE BILL 184**

WHEREAS, any official position of the City of Pasadena with respect to legislation, rules, regulations or policies proposed to or pending before a local, state, or federal government 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, Senate Bill (SB) 184 (Leno) would authorize the legislative body of any city or county to adopt ordinances 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, SB 184 would amend Sections 65850 of the Government Code, relating to land use, the State's Planning and Zoning Law, which is the statutory provision from which much of local government's land use powers are derived, to make it clear that inclusionary housing is a permissible land use power; and

WHEREAS, SB 184 would restore the ability of local governments to enact inclusionary housing programs by clarifying that the Costa-Hawkins Act which gives rental housing owners the right to set the initial and all subsequent rental rates for a unit built after February 1, 1995, does not apply to inclusionary housing programs; and

WHEREAS, enactment into law of SB 184 would supersede the Second District California Court of Appeal ruling in the case of Palmer/Sixth Street Properties, L.P. v. City of Los Angeles, 175 Cal. App, 4th 1396 (2009), which changed the interpretation of Costa-Hawkins as it relates to inclusionary housing in the City of Los Angeles because it held that the inclusionary units required by the City of Los Angeles violated Costa-Hawkins; 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, 140 jurisdictions in California currently have mandatory inclusionary housing ordinances; which vary in the percentages of affordable housing units required, and in the options that developers may choose to comply; and

WHEREAS, the City of Pasadena has enacted an inclusionary housing ordinance that requires developers to choose from a menu of options all of which are intended to ameliorate the negative effects on affordable housing caused by development of the limited remaining developable land for strictly market rate housing; and

WHEREAS, allowing local governments the ability to implement inclusionary housing programs is critical to address the increasing need of affordable housing Statewide, and therefore, SB 184 addresses the affordable housing challenge of local government bodies by enabling each jurisdiction to enact their own local ordinances to address their affordable housing needs;

NOW, THEREFORE, BE IT RESOLVED, that the City of Pasadena hereby supports SB 184 (Leno), which would authorize the legislative body of any city or county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements, and would restore the ability of local governments to enact inclusionary housing programs by clarifying that the Costa-Hawkins Act which gives rental housing owners the right to set the initial and all subsequent rental rates for a unit built after February 1, 1995, does not apply to inclusionary housing programs.

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Adopted at the _____ meeting of the City Council on the _____ day of _____, 2011 by the following vote:

AYES:

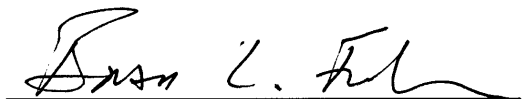
NOES:

ABSENT:

ABSTAIN:

Mark Jomsky, CMC, City Clerk

Approved as to form:



Brad L. Fuller
Assistant City Attorney