



Councilmember Dan Kalb

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CITY OF OAKLAND

CITY HALL - ONE FRANK H. OGAWA PLAZA, 2ND FLOOR - OAKLAND - CALIFORNIA 94612

Agenda Memorandum

To: Rules & Legislation Committee

From: Councilmember Dan Kalb

Date: March 30, 2017

Subject: Support of AB 1505: Inclusive Neighborhoods

Colleagues on the City Council and Members of the Public,

With our Resolution of Support for AB 1505 (Bloom), I am submitting the attached Fact Sheet and text of the bill.

Respectfully submitted,

A handwritten signature in cursive script that reads "Dan Kalb".

Dan Kalb, Councilmember

AB 1505 (Bloom)

Restoring Local Discretion in Designing Inclusionary Housing Programs

Fact Sheet

PURPOSE

Local inclusionary housing programs in California have proven to be effective tools for producing new homes affordable to working families and creating strong, diverse neighborhoods with a range of housing choices. Around 170 cities and counties have some form of inclusionary housing requirement in place as a complement to other local, state, and federal programs to address California's affordable housing shortage. Since 2003, inclusionary programs have produced more than 30,000 affordable housing units to working households, seniors, and special needs populations.

Inclusionary policies have been utilized in California for decades, dating back to the late 1970s. However, an appellate court decision—*Palmer/Sixth Street Properties L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2009)—cut off one crucial option for local governments: the ability to apply inclusionary policies to rental housing. The Palmer court improperly conflated rent control, which is regulated by the state's Costa Hawkins act, and deed-restricted affordable housing, which is not, creating uncertainty and confusion for local governments and housing advocates regarding the future viability of this important and well-established local land use tool.

SUMMARY

AB 1505 restores the long-standing authority of local governments to choose to require the inclusion of affordable rental units as one component of their local inclusionary housing policies, if they choose to adopt such policies. Local governments can already apply inclusionary policies to for-sale housing. This bill ensures that rental housing is not treated differently.

BACKGROUND

In 2009, a state appellate court ruling in the *Palmer v. City of Los Angeles* case indicated that the state's Costa-Hawkins Rental Housing Act prohibits local governments from creating affordable rental housing through local inclusionary programs.

AB 1505 is similar to AB 2502 (Mullin, 2016) and AB 1229 (Atkins), which Governor Brown vetoed in 2013. In his veto message, the Governor indicated that prior to making a legislative change regarding inclusionary housing, he wanted to wait for the California Supreme Court to issue its decision on the *California Building Industry Association (CBIA) v. City of San Jose* case. In this case, CBIA argued that San Jose's 15% inclusionary housing ordinance is unconstitutional on

the basis of the Fifth Amendment, which indicates that private property should not be taken for public use without just compensation. In June 2015, the Supreme Court unanimously upheld San Jose's inclusionary housing ordinance and ruled that the ordinance is an exercise of the city's police power.

SPONSORS

- California Housing Consortium (co-sponsor)
- California Rural Legal Assistance Foundation (cosponsor)
- Housing California (co-sponsor)
- Non-Profit Housing Association of Northern California (co-sponsor)
- Western Center on Law & Poverty (co-sponsor)

See reverse for SUPPORT and OPPOSITION

Version: 3/14/2017

SUPPORT

OPPOSITION

None at this time

ASSEMBLY BILL

No. 1505

Introduced by Assembly Members Bloom, Chiu, and Gloria

(Principal coauthor: Senator Wiener)

(Coauthors: Assembly Members Mullin and Ting)

(Coauthor: Senator Allen)

February 17, 2017

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1505, as introduced, Bloom. Land use: zoning regulations.

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

This bill would additionally authorize the legislative body of any city, county, or city and county to adopt ordinances to require, as a condition of development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, moderate-income, lower income, very low income, or extremely low income households, as specified, and would declare the intent of the Legislature in adding this provision. The bill would also make nonsubstantive changes.

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

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

SECTION 1. Section 65850 of the Government Code is amended to read:

65850. The legislative body of any county or city may, pursuant to this chapter, adopt ordinances that do any of the following:

(a) Regulate the use of buildings, structures, and land as between industry, business, residences, open space, including agriculture, recreation, enjoyment of scenic beauty, use of natural resources, and other purposes.

(b) Regulate signs and billboards.

(c) Regulate all of the following:

(1) The location, height, bulk, number of stories, and size of buildings and structures.

(2) The size and use of lots, yards, courts, and other open spaces.

(3) The percentage of a lot which may be occupied by a building or structure.

(4) The intensity of land use.

(d) Establish requirements for offstreet parking and loading.

(e) Establish and maintain building setback lines.

(f) Create civic districts around civic centers, public parks, public buildings, or public grounds, and establish regulations for those civic districts.

(g) Require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to, and occupied by, households with incomes that do not exceed the limits for moderate-income, lower income, very low income, or extremely low income households specified in Sections 50079.5, 50105, and 50106 of the Health and Safety Code.

SEC. 2. The Legislature finds and declares all of the following:

(a) Inclusionary housing ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units of affordable housing in the last decade alone.

(b) Since the 1970s, over 170 jurisdictions have enacted inclusionary housing ordinances to meet their affordable housing needs.

(c) While many of these local programs have been in place for decades, a 2009 appellate court decision has created uncertainty

1 and confusion for local governments regarding the use of this tool
2 to ensure the inclusion of affordable rental units in residential
3 developments.

4 (d) It is the intent of the Legislature to reaffirm the authority of
5 local jurisdictions to include in these inclusionary housing
6 ordinances requirements related to the provision of rental units.

7 (e) The Legislature declares its intent in adding subdivision (g)
8 to Section 65850 of the Government Code, pursuant to Section 1
9 of this act, to supersede any holding or dicta in any court decision
10 or opinion to the extent that the decision or opinion conflicts with
11 that subdivision.

12 (f) In no case is it the intent of the Legislature in adding
13 subdivision (g) to Section 65850 of the Government Code, pursuant
14 to Section 1 of this act, to enlarge, diminish, or modify in any way
15 the existing authority of local jurisdictions to establish, as a
16 condition of development, inclusionary housing requirements,
17 beyond reaffirming their applicability to rental units.

18 (g) This act does not modify or in any way change or affect the
19 authority of local jurisdictions to require, as a condition of the
20 development of residential units, that the development include a
21 certain percentage of residential for-sale units affordable to, and
22 occupied by, households with incomes that do not exceed the limits
23 for moderate-income, lower income, very low income, or extremely
24 low income households.

25 (h) It is the intent of the Legislature to reaffirm that existing
26 law requires that the action of any legislative body of any city,
27 county, or city and county to adopt a new inclusionary housing
28 ordinance be taken openly and that their deliberations be conducted
29 openly consistent with the requirements of the Ralph M. Brown
30 Act (Chapter 9 (commencing with Section 54950) of Part 1 of
31 Division 2 of Title 5 of the Government Code).

17 MAR 30 PM 4:18

DRAFT

City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB

RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1505 (BLOOM, CHIU, & GLORIA) THAT WOULD AUTHORIZE LOCAL JURISDICTIONS TO REQUIRE RESIDENTIAL DEVELOPMENTS TO INCLUDE A PERCENTAGE OF AFFORDABLE RENTAL UNITS

WHEREAS, there is an urgent need for affordable housing in Oakland due to the housing crisis; and

WHEREAS, dating back to the 1970s, local inclusionary housing programs in California have proven to be effective tools for producing new homes affordable to working families and creating strong, diverse neighborhoods with a range of housing choices; and

WHEREAS, a 2009 appellate court decision, *Palmer/Sixth Street Properties LP v. City of Los Angeles*, interpreted state law as cutting off inclusionary requirements for rental housing; and

WHEREAS, local governments should have the authority to determine if they wish to adopt inclusionary requirements for rental units in their jurisdiction; and

WHEREAS, Assembly Bill (AB) 1505 (Bloom, Chiu, & Gloria) would supercede the *Palmer* decision and allow, but not require, local jurisdictions to adopt enforceable inclusionary zoning ordinances for rental housing; and

WHEREAS, AB 1505 is substantially similar to 2013's AB 1229 (Atkins), for which the Oakland City Council issued a Resolution in support; and

WHEREAS, AB 1505 is supported by Non-Profit Housing Association of Northern California, Western Center on Law & Poverty, and others; now, therefore, be it

RESOLVED: That the Oakland City Council hereby endorses AB 1505 and urges the California State Legislature and Governor Jerry Brown to support its enactment into law.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON MCELHANEY, GUILLÉN,
KALB, KAPLAN, AND PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California