



Berkeley City Council

CONSENT CALENDAR
November 10, 2009

To: Honorable Mayor and Members of the City Council

From: Councilmembers Jesse Arreguín, Laurie Capitelli and Linda Maio

Subject: Urging the California State Legislature to Amend the Costa-Hawkins Rental Housing Act to Clarify That It Does Not Preempt Inclusionary Zoning Requirements

RECOMMENDATION:

Adopt a Resolution urging the California State Legislature to amend the Costa-Hawkins Rental Housing Act to clarify that it does not pre-empt inclusionary zoning requirements.

BACKGROUND:

In 1995, the California State Legislature adopted the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50-1954.535), which among other things prohibits permanent rent limits on residential rental units.

The purpose of the act was to end “strong rent control” policies, whereby cities adopted rent ceilings which could not be increased when a new tenant moved in. The act was not intended to pre-empt inclusionary requirements, which many cities in California already had in place at the time.

Berkeley adopted its Inclusionary Ordinance in 1986. Since then it is 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 not only severely challenges our ability to provide affordable housing at a time when people need it the most, but it also goes against the legislative intent of the Costa-Hawkins Act.

Because the Palmer decision is now the law in the State of California, it is important that the State Legislature amend the Costa-Hawkins Act to clarify that it does not pre-empt inclusionary zoning requirements.

FINANCIAL IMPLICATIONS:

NONE.

CONTACT PERSON:

Jesse Arreguín, Councilmember, District 4

981-7140

Laurie Capitelli, Councilmember, District 5

981-7150

Attachments:

1. Resolution

RESOLUTION NO.

URGING THE CALIFORNIA STATE LEGISLATURE TO AMEND THE COSTA-HAWKINS RENTAL HOUSING ACT TO CLARIFY THAT IT DOES NOT PRE-EMPT INCLUSIONARY ZONING REQUIREMENTS

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 has 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 finds 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 Costa-Hawkins Rental Housing Act, adopted by the State Legislature in 1995, was according to its sponsors written to address "strong rent control" policies, and was not intended to prohibit inclusionary zoning requirements, which many jurisdictions had already adopted at the time; and

WHEREAS, The *Palmer* decision not only severely challenges our ability to provide needed affordable housing to people throughout the state but also goes against the legislative intent of the Costa-Hawkins Rental Housing Act; and

WHEREAS, Because the *Palmer* decision is now the law in the State of California it is important that the California State Legislature amend the Costa-Hawkins Rental Housing Act to clarify that inclusionary zoning requirements are not pre-empted by the law.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it hereby urges the California State Legislature to amend the Costa-Hawkins Rental Housing Act (California Civil Code Section 1954.50-1954.535) to clarify that it does not pre-empt inclusionary zoning requirements; and

BE IT FURTHER RESOLVED that copies of this resolution be sent to California State Senate President Pro Tem Darrell Steinberg; Speaker of the Assembly Karen Bass; State Senator Loni Hancock and Assemblymember Nancy Skinner with the request that they sponsor and support legislation to amend the Costa-Hawkins Act to enable jurisdictions throughout California to continue to use inclusionary zoning to create needed affordable housing for people in our state.