



<b>CITY COUNCIL ACTION REQUEST</b>			
<b>Department(s):</b> Housing	<b>Date:</b> July 28, 2017	<b>Coordination:</b> City Attorney's Office	<b>Dept. Approval:</b> /s/ Jacky Morales-Ferrand
			<b>CMO Approval:</b> 
<b>SUBJECT:</b> AB 1505 (Bloom, Chiu and Gloria) – Land use: zoning regulations SB 277 (Bradford) – Land use: zoning regulations			
<b>RECOMMENDED POSITION:</b> Support			
<b>RECOMMENDED ACTION:</b>			
<ol style="list-style-type: none"> <li>1. Adopt a position of support for AB 1505 (Bloom, Chiu and Gloria) and SB 277 (Bradford), which would strengthen the City's Inclusionary Housing Ordinance.</li> <li>2. Recommend these items be agendized for the August 15, 2017, City Council Meeting so that the City's Legislative Representative can advocate the City's support for AB 1505 (Bloom, Chiu and Gloria) and SB 277 (Bradford).</li> </ol>			
<b>BILL SYNOPSIS:</b>			
<p>AB 1505 and SB 277 are identical bills as of the time staff is submitting this memo. The legislation restores the ability of local governments to apply locally-adopted inclusionary zoning ordinances to rental housing. These bills are similar to previous bills, also supported by the City Council, that were brought before the legislature in 2013 (AB 1229 (Atkins)) and 2016 (AB 2502 (Mullin)). These bills sought to resolve the conflict created by the 2009 court decision in <i>Palmer/Sixth Street Properties v. the City of Los Angeles</i>. This ruling held that a local zoning ordinance which required affordable rental housing was unenforceable due to the State's Costa-Hawkins Rental Housing Act's limits on the ability of a locality to restrict rents.</p> <p>In 2013, Governor Brown vetoed AB 1229 citing the need to wait for the court's decisions on pending legal challenges to inclusionary housing. In 2015, the State Supreme Court upheld the challenged portion of the City's inclusionary housing ordinance as a valid exercise of police powers. While at least one other lawsuit on inclusionary housing is currently pending in California, the San José case was a major ruling reinforcing inclusionary housing as a tool for localities.</p> <p>AB 1505 and SB 277 would (1) explicitly authorize cities and counties to adopt ordinances that require, as a condition of the development of residential rental units, that the development include a certain percentage of residential rental units affordable to moderate-income, lower-income, very low-income, or extremely low-income households; (2) clarify the Legislature's intent to supersede the court decision in <i>Palmer v. City of Los Angeles</i>, thereby making inclusionary housing requirements apply to rental developments; and, (3) require any inclusionary ordinance to provide alternative means of compliance, such as in-lieu fees, land dedication, off-site construction, or acquisition/rehab of existing units.</p>			

**IMPACTS TO CITY OF SAN JOSE:**

The City's Inclusionary Housing Ordinance ("Ordinance") applies only to for-sale developments at this time. As a result of the *Palmer* decision, the City inserted language into its Ordinance which would suspend inclusionary obligations on rental housing projects until the *Palmer* decision is overturned, disproved, or depublished by a court, or is modified by legislation. If this legislation passes and is signed, the *Palmer* ruling would be overturned and the Ordinance would apply to rental developments. The City's Ordinance already includes alternative means of compliance, so those legislative provisions would not necessitate a change to our Ordinance.

Overturing the *Palmer* ruling is critically important to San José as it will help to create additional vitally-needed on-site affordable housing in market-rate rental developments for lower-income families that is integrated into neighborhoods. The *Palmer* ruling has irreparably hurt the City's ability to economically integrate neighborhoods over the past seven years as neighborhoods grew during San José's rental construction boom. The City Council integrated the rental exception into its Inclusionary Housing Policy in 2010. Since that time, staff estimates that *Palmer* has resulted in the loss of approximately 2,400 affordable apartments in San José. These developments also did not pay the Affordable Housing Impact Fee ("Fee"), as either they predated the establishment of the Fee or were covered by grandfathering provisions that excluded them from the Fee. The Ordinance requires that a 55-year recorded restriction effectuate affordability on apartments. If it were assumed that an average household stayed in its affordable apartment for seven years, *Palmer* took away the opportunity for almost 19,000 households to benefit from restricted rents over time.

Reinstating rental inclusionary requirements might also eliminate the need to charge the Affordable Housing Impact Fees on market-rate rental developments. Running one program instead of two would be simpler for developers and simpler to administer for City staff. It would also strengthen the City's ability to ensure that restricted affordable development occurs in Urban Villages in a location close to transit, which will maximize the effect of lowering the City's greenhouse gas emissions.

**POLICY ALIGNMENT:**

These bills align with the Council-approved 2017 Legislative Guiding Principles and Top Legislative Priorities: Protect Local Control, Palmer Reform.

**SUPPORTERS/OPPONENTS:**

It is expected that both bills will have similar supporters and opponents, including:

**Supporters (partial list):** California Housing Consortium (co-source), California Rural Legal Assistance Foundation (co-source), Housing California (co-source), Non-Profit Housing Association of Northern California (co-source), Western Center on Law and Poverty (co-source), American Planning Association, BRIDGE Housing, California Coalition for Rural Housing, California Housing Partnership Corporation, California League of Conservation Voters, California State Association of Counties, City of East Palo Alto, City of Emeryville, City of Glendale, City of Los Angeles, City of Mountain View, City of Napa, City of Oakland, City of San Mateo, Community Housing Partnership, Corporation for Supportive Housing, Council of Community Housing Organizations, Council of Infill Builders, County of Los Angeles Board of Supervisors, County of Santa Clara Board of Supervisors, Disability Rights California, EAH Housing, East Bay Housing Organizations, Eden Housing, Greenbelt Alliance, John Stewart Company, Law Foundation of Silicon Valley, League of California Cities, Legal Aid Foundation of Los Angeles, Legal Services of Northern California, Los Angeles Homeless Services Authority, Marin County Council of Mayors and

Councilmembers, MidPen Housing Corporation, Natural Resources Defense Council, Public Interest law Project, Resources for Community Development, SEIU California, Silicon Valley Community Foundation, State Building & Construction Trades Council, SV@Home, Western Center on Law and Poverty.

**Opponents (partial list):** Apartment Association California - Southern Cities, Apartment Association of Greater Los Angeles, Apartment Association of Orange County, East Bay Rental Housing Association, GH Palmer and Associates, North Valley Property Owner Association, San Diego County Apartment Association, Santa Barbara Rental Property Association.

**STATUS OF BILLS:**

AB 1505: Passed Assembly Floor 5/4/17; passed Senate Transportation and Housing 6/6/17; read a second time 7/11/17 and ordered to third reading.

SB 277: Passed Senate Floor 6/1/17; passed Assembly Local Government 6/28/17; passed Assembly Housing and Community Development 7/12/17; read a second time 7/17/17 and ordered to third reading.

**FOR QUESTIONS CONTACT:** Jacky Morales-Ferrand, Director of Housing, 408-535-3855.