

13 JUN 12 PM 3:37

**CITY OF OAKLAND**  
**BILL ANALYSIS**



Date: June 11, 2013

Bill Number: AB 1229

Bill Author: Assemblymember Toni Atkins

**DEPARTMENT INFORMATION**

Contact: Oliver Luby

Department: Office of Dan Kalb, Councilmember, District 1

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**RECOMMENDED POSITION: Support**

**Summary of the Bill:** This bill authorizes the legislative body of a city or county to establish inclusionary housing requirements as a condition of development, which may require the provision of affordable residential units. The bill states the Legislature's intent to supersede any holding or dicta in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, to the extent that the court opinion in that case conflicts with the authority of local governments to adopt inclusionary housing requirements.

**Positive Factors for Oakland:** This bill would restore an essential tool for counties and cities for planning and providing their fair share of the housing need for lower-income residents in the state. Inclusionary housing programs are an important tool in the production of affordable new homes for working families.

**Negative Factors for Oakland: None**

**PLEASE RATE THE EFFECT OF THIS MEASURE ON THE CITY OF OAKLAND:**

- Critical** (top priority for City lobbyist, city position required ASAP)
- Very Important** (priority for City lobbyist, city position necessary)
- Somewhat Important** (City position desirable if time and resources are available)
- Minimal or**  **None** (do not review with City Council, position not required)

Item: \_\_\_\_\_  
Rules & Legislation Comte.  
June 27, 2013

**Known support:**

California Rural Legal Assistance Foundation [CO-SPONSOR]  
Non-Profit Housing Association of Northern California  
[CO-SPONSOR]  
San Diego Housing Federation [CO-SPONSOR]  
Western Center on Law and Poverty [CO-SPONSOR]  
American Planning Association, California Chapter  
BRIDGE Housing  
Cabrillo Economic Development Corporation  
California State Association of Counties  
Cities Association of Santa Clara County  
Cities of Burbank, Chico, Cloverdale, Danville, Davis,  
Emeryville, Fort Bragg, Lathrop, Pasadena, San Jose,  
San Mateo, Santa Monica, and Wasco  
City and County of San Francisco  
Council of Community Housing Organizations  
EAH Housing  
East Bay Housing Organizations  
First Place for Youth  
Greenbelt Alliance  
Housing Leadership Council of San Mateo County  
Law Foundation of Silicon Valley  
LeadingAge California  
League of California Cities  
League of Women Voters of California  
League of Women Voters of Marin County  
Los Angeles County Division, League of California  
Cities  
Marin Partnership to End Homelessness  
Marin Workforce Housing Trust  
MidPen Housing  
Mercy Housing  
Move LA  
Sacramento Housing Alliance

**Known Opposition:**

Apartment Association, California Southern Cities  
Apartment Association of Greater Los Angeles  
Apartment Association of Orange County  
California Association of Realtors  
California Building Industry Association  
East Bay Rental Housing Association

GH Palmer Associates  
NorCal Rental Property Association  
San Diego County Apartment Association  
San Francisco Association of Realtors  
Santa Barbara Rental Property Association

**Attached: bill text.**

Respectfully Submitted,

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Councilmember Dan Kalb

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CALIFORNIA LEGISLATURE—2013—14 REGULAR SESSION

ASSEMBLY BILL

No. 1229

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Introduced by Assembly Member Atkins  
(Principal coauthor: Assembly Member Mullin)  
(Principal coauthor: Senator Leno)

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1229, as introduced, Atkins. Land use: zoning regulations.

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

This bill would additionally authorize the legislative body of any city or county to adopt ordinances to establish, as a condition of development, inclusionary housing requirements, as specified, and would declare the intent of the Legislature in adding this provision. The bill would also make a technical, nonsubstantive change.

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

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

- 1 SECTION 1. Section 65850 of the Government Code is
- 2 amended to read:
- 3 65850. The legislative body of any county or city may, pursuant
- 4 to this chapter, adopt ordinances that do any of the following:

- 1 (a) Regulate the use of buildings, structures, and land as between  
2 industry, business, residences, open space, including agriculture,  
3 recreation, enjoyment of scenic beauty, use of natural resources,  
4 and other purposes.
- 5 (b) Regulate signs and billboards.
- 6 (c) Regulate all of the following:
- 7 (1) The location, height, bulk, number of stories, and size of  
8 buildings and structures.
- 9 (2) The size and use of lots, yards, courts, and other open spaces.
- 10 (3) The percentage of a lot which may be occupied by a building  
11 or structure.
- 12 (4) The intensity of land use.
- 13 (d) Establish requirements for-offstreet *off-street* parking and  
14 loading.
- 15 (e) Establish and maintain building setback lines.
- 16 (f) Create civic districts around civic centers, public parks,  
17 public buildings, or public grounds, and establish regulations for  
18 those civic districts.
- 19 (g) *Establish, as a condition of development, inclusionary*  
20 *housing requirements, which may require the provision of*  
21 *residential units affordable to, and occupied by, owners or tenants*  
22 *whose household incomes do not exceed the limits for lower*  
23 *income, very low income, or extremely low income households*  
24 *specified in Sections 50079.5, 50105, and 50106 of the Health and*  
25 *Safety Code.*
- 26 SEC. 2. The Legislature finds and declares all of the following:
- 27 (a) Inclusionary housing ordinances have provided quality  
28 affordable housing to over 80,000 Californians, including the  
29 production of an estimated 30,000 units of affordable housing in  
30 the last decade alone.
- 31 (b) Since the 1970s, over 170 jurisdictions have enacted  
32 inclusionary housing ordinances to meet their affordable housing  
33 needs.
- 34 (c) While many of these local programs have been in place for  
35 decades, the recent decision in *Palmer/Sixth Street Properties, L.P.*  
36 *v. City of Los Angeles* (2009) 175 Cal.App.4th 1396, has created  
37 uncertainty and confusion for local governments regarding the  
38 future viability of this important local land use tool.
- 39 (d) It is the intent of the Legislature to reaffirm the authority of  
40 local jurisdictions to enact and enforce these ordinances.

1 (e) The Legislature declares its intent in adding subdivision (g)  
2 to Section 65850 of the Government Code, pursuant to Section 1  
3 of this act, to supersede any holding or dicta in *Palmer/Sixth Street*  
4 *Properties, L.P. v. City of Los Angeles* (2009) 175 Cal.App.4th  
5 1396, to the extent that the opinion in that case conflicts with that  
6 subdivision. This act shall not otherwise be construed to enlarge  
7 or diminish the authority of a jurisdiction beyond those powers  
8 that existed as of July 21, 2009.

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# OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

## INTRODUCED BY COUNCILMEMBERS KALB & GIBSON MCELHANEY

### RESOLUTION IN SUPPORT OF ASSEMBLY BILL 1229 (ATKINS) – STATE LEGISLATION THAT WOULD RE-AUTHORIZE CITIES AND COUNTIES TO ADOPT ORDINANCES WITH INCLUSIONARY RENTAL HOUSING REQUIREMENTS FOR LOWER INCOME HOUSEHOLDS.

**WHEREAS**, local inclusionary housing programs have proven to be one of the most effective tools for producing new homes affordable to working families and creating strong, diverse neighborhoods with a range of housing choices; and

**WHEREAS**, inclusionary ordinances have provided quality affordable housing to over 80,000 Californians, including the production of an estimated 30,000 units in the last decade alone; and

**WHEREAS**, rent prices in Oakland went up 11.2 percent in fiscal year 2011-12, compared to the year prior; and

**WHEREAS**, the average asking rent for Oakland apartments in buildings with at least fifty units was \$1,925 in the third quarter of 2012, reflecting a 19 percent rise from the same period the prior year; and

**WHEREAS**, nearly 170 California cities and counties have some form of inclusionary housing policy in place as a complement to other local, state, and federal programs to help address California's affordable housing shortage, combat discrimination, and reduce pollution and greenhouse gas emissions; and

**WHEREAS**, inclusionary zoning policies both foster our communities providing places for workers to live near their jobs and reduce potential opposition to affordable housing by ensuring its inclusion in new residential development; and

**WHEREAS**, the *Palmer* court case effectively held that the state's rent control law prohibits local governments from creating affordable rental housing through inclusionary housing requirements; and

**WHEREAS**, passage of AB 1229 would supersede the *Palmer* decision and allow, but not require, local jurisdictions to adopt enforceable inclusionary zoning ordinances for rental housing; now, therefore be it

**RESOLVED**, that the Oakland City Council endorses AB 1229, authored by Assemblymember Toni Atkins, that would re-authorize cities and counties to adopt ordinances with inclusionary rental housing requirements for lower income households; and be it

**FURTHER RESOLVED**, that a copy of this Resolution be provided to the Governor, Assembly Speaker John Pérez, Senate President pro Tem Darrell Steinberg, State Senator Loni Hancock, Assemblymember Toni Atkins, Assemblymember Rob Bonta, and Assemblymember Nancy Skinner.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF, AND  
PRESIDENT KERNIGHAN

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

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LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California