



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Authorize the Mayor, on Behalf of the City Council, to Send a Letter of Support for AB 1229 (Atkins) and a Letter of Opposition to AB 325 (Alejo)

MEETING DATE: May 1, 2013

PREPARED BY: City Clerk

RECOMMENDED ACTION: Authorize the Mayor, on behalf of the City Council, to send a letter of support for AB 1229 (Atkins) and a letter of opposition to AB 325 (Alejo).

BACKGROUND INFORMATION: On April 18, 2013, the City received a request from the League of California Cities to support AB 1229 (Atkins) and oppose AB 325 (Alejo).

In regards to AB 1229, the Planning and Zoning Law authorizes the legislative body of any city or county to adopt ordinances regulating zoning within its jurisdiction. 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 and would declare the intent of the Legislature in adding this provision.

In regards to AB 325, the Planning and Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a one year of accrual of the cause of action. When the action or proceeding is brought in connection with the development of housing increasing the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first. This bill would authorize the notice to be filed any time within 3 years after a specified action pursuant to existing law.

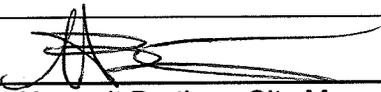
For the reasons stated above and in the attached draft correspondence, it is recommended that the City Council authorize the execution and delivery of the proposed correspondence.

FISCAL IMPACT: Not applicable at this time.

FUNDING AVAILABLE: Not applicable at this time.



Randi Johl
City Clerk

APPROVED: 

Konradt Bartlam, City Manager

Randi Johl

From: Randi Johl
Sent: Monday, April 22, 2013 02:38 PM
To: Randi Johl
Subject: FW: Letters needed

Attachments: AB 325 (Alejo) Action Alert 041513 (2).pdf; AB 325 Sample Letter.doc; AB 1229 (Atkins) Action Alert 041113b.docx; AB 1229 Sample support letter-FINAL.doc



AB 325 (Alejo)
Action Alert 04...



AB 325 Sample
Letter.doc (31 K...



AB 1229 (Atkins)
Action Alert ...



AB 1229 Sample
support letter-...

-----Original Message-----

From: Stephen R. Qualls [mailto:squalls@cacities.org]
Sent: Thursday, April 18, 2013 09:44 AM

Subject: Letters needed

Attached you will please find letters concerning AB 325 and AB 1229.

AB 325 (oppose), extends the statute of limitation for challenging certain housing or planning decisions. The current statute of limitations of 1 year and 150 days already exceeds the 90 days allowed for other planning decisions.

AB 1229 (support), returns the decision making process for inclusionary housing to local government. But this shouldn't be of concern only to those cities that have inclusionary housing elements. This should concern every city as it is a conduit to return local control to local government. Something that has been eroded lately by the Legislature in Sacramento.

These both need to be sent as soon as possible because AB 1229 is to be heard on May 17th and AB 325 on May 30th.

Please cc me when you send the letters.

Thank you for your support,

Stephen Qualls
Central Valley Regional Public Affairs Manager
League of California Cities
209-614-0118
Fax 209-883-0653
squalls@cacities.org<mailto:squalls@cacities.org>

To expand and protect local control for cities through education and advocacy in order to enhance the quality of life for all Californians.

<<http://www.cacities.org/AC>>

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CITY COUNCIL

ALAN NAKANISHI, Mayor
PHIL KATZAKIAN,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

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KONRADT BARTLAM,
City Manager
RANDI JOHL, City Clerk
D. STEPHEN SCHWABAUER
City Attorney

May 1, 2013

The Honorable Norma Torres
Chair, Housing and Community Development Committee
California State Assembly
State Capitol Building, Room 2179
Sacramento, California 95814
Via Facsimile: (916) 319-2152

SUBJECT: AB 325 (Alejo). Land Use and Planning: Cause of Actions: Time Limitations. NOTICE OF OPPOSITION

Dear Assembly Member Torres:

The City of Lodi has taken a position of oppose on AB 325, which would expand the statute of limitations to file suit against a city's housing element to over four years.

Government Code Section 65009 states that legal action against a city or county "has a chilling effect on the confidence with which property owners and local governments can proceed with projects." In addition, "The purpose of this section is to provide certainty for property owners and local governments regarding decisions made pursuant to this division." Expanding the statute of limitations goes against the very purpose of this section with which this bill seeks to amend.

AB 325 is an attempt to expand the current statute of limitations without regard to whether a city's housing element follows the letter of the law or a jurisdiction fails to adopt a housing element entirely. Our city has worked hard to meet the state's statutory housing requirements. The possibility of a lawsuit looming over our head for over four years would have a devastating effect on development and our local economy.

For these reasons, the City of Lodi has an oppose position on AB 325.

Sincerely,

Alan Nakanishi
Mayor

C: Anya Lawler, Consultant, Assembly Housing and Community Development Committee (916-319-3182)
William Weber, Consultant, Assembly Republican Caucus (916-319-3902)
Kirstin Kolpitzke, League of California Cities
Stephen Qualls, League of California Cities

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KONRADT BARTLAM,
City Manager
RANDI JOHL, City Clerk
D. STEPHEN SCHWABAUER
City Attorney

May 1, 2013

The Honorable Toni G. Atkins
Member, California State Assembly
State Capitol Building, Room 319
Sacramento, California 95814
Via Facsimile: (916) 319-2178

SUBJECT: AB 1229 (Atkins). Land Use: Zoning Regulations.
NOTICE OF SUPPORT

Dear Assembly Member Atkins:

The City of Lodi is pleased to support your AB 1229, which would restore cities' zoning authority for inclusionary housing.

In the appellate court decision, *Palmer/Sixth Street Properties L.P. v. City of Los Angeles*, 175 Cal. App. 4th 1396 (2009), the courts took a very broad interpretation of the Costa-Hawkins Act and its application on inclusionary housing ordinances, opining that inclusionary housing ordinances with regards to rental housing conflicted with and were preempted by the Costa-Hawkins Act. Costa-Hawkins was intended to restrict systems of rent control, not preclude rent restrictions on inclusionary housing.

Inclusionary housing programs are an important tool in the production of affordable new homes for working families. As a result, California's affordable housing stock continues to be severely diminished.

For these reasons, the City of Lodi supports AB 1229.

Sincerely,

Alan Nakanishi
Mayor

C: Anya Lawler, Consultant, Assembly Housing and Community Development
Committee (916-319-3182)
William Weber, Consultant, Assembly Republican Caucus (916-319-3902)
Kirstin Kolpitcke, League of California Cities
Stephen Qualls, League of California Cities

ASSEMBLY BILL

No. 325

Introduced by Assembly Member Alejo

February 13, 2013

An act to amend Sections 65009, 65589.3, and 65755 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 325, as introduced, Alejo. Land use and planning: cause of actions: time limitations.

(1) The Planning and Zoning Law requires an action or proceeding against local zoning and planning decisions of a legislative body to be commenced and the legislative body to be served within a year of accrual of the cause of action, if it meets certain requirements. Where the action or proceeding is brought in support of or to encourage or facilitate the development of housing that would increase the community's supply of affordable housing, a cause of action accrues 60 days after notice is filed or the legislative body takes a final action in response to the notice, whichever occurs first.

This bill would authorize the notice to be filed any time within 3 years after a specified action pursuant to existing law. The bill would declare the intent of the Legislature that its provisions modify a specified court opinion. The bill would also provide that in that specified action or proceeding, no remedy pursuant to specified provisions of law abrogate, impair, or otherwise interfere with the full exercise of the rights and protections granted to a tentative map application or a developer, as prescribed.

(2) The Planning and Zoning Law establishes a rebuttable presumption, in any action filed on or after January 1, 1991, taken to

challenge the validity of a housing element, of the validity of a housing element or amendment if the Department of Housing and Community Development has found that the element or amendment substantially complies with specified provisions of existing law.

This bill would provide in any action brought against a city, county, or city and county to challenge the adequacy of a housing element, if a court finds that the adopted housing element or amended housing element for the current planning period substantially complies with specified provisions, that the element or amendment be deemed to satisfy any condition of a state-administered housing grant program requiring a department finding of housing element compliance.

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. It is the intent of the Legislature in enacting
2 Section 2 of this act to modify the court's opinion in Urban Habitat
3 Program v. City of Pleasanton (2008) 164 Cal.App.4th 1561, with
4 respect to the interpretation of Section 65009 of the Government
5 Code.
- 6 SEC. 2. Section 65009 of the Government Code is amended
7 to read:
- 8 65009. (a) (1) The Legislature finds and declares that there
9 currently is a housing crisis in California and it is essential to
10 reduce delays and restraints upon expeditiously completing housing
11 projects.
- 12 (2) The Legislature further finds and declares that a legal action
13 or proceeding challenging a decision of a city, county, or city and
14 county has a chilling effect on the confidence with which property
15 owners and local governments can proceed with projects. Legal
16 actions or proceedings filed to attack, review, set aside, void, or
17 annul a decision of a city, county, or city and county pursuant to
18 this division, including, but not limited to, the implementation of
19 general plan goals and policies that provide incentives for
20 affordable housing, open-space and recreational opportunities, and
21 other related public benefits, can prevent the completion of needed
22 developments even though the projects have received required
23 governmental approvals.

1 (3) The purpose of this section is to provide certainty for
2 property owners and local governments regarding decisions made
3 pursuant to this division.

4 (b) (1) In an action or proceeding to attack, review, set aside,
5 void, or annul a finding, determination, or decision of a public
6 agency made pursuant to this title at a properly noticed public
7 hearing, the issues raised shall be limited to those raised in the
8 public hearing or in written correspondence delivered to the public
9 agency prior to, or at, the public hearing, except where the court
10 finds either of the following:

11 (A) The issue could not have been raised at the public hearing
12 by persons exercising reasonable diligence.

13 (B) The body conducting the public hearing prevented the issue
14 from being raised at the public hearing.

15 (2) If a public agency desires the provisions of this subdivision
16 to apply to a matter, it shall include in any public notice issued
17 pursuant to this title a notice substantially stating all of the
18 following: "If you challenge the (nature of the proposed action)
19 in court, you may be limited to raising only those issues you or
20 someone else raised at the public hearing described in this notice,
21 or in written correspondence delivered to the (public entity
22 conducting the hearing) at, or prior to, the public hearing."

23 (3) The application of this subdivision to causes of action
24 brought pursuant to subdivision (d) applies only to the final action
25 taken in response to the notice to the city or clerk of the board of
26 supervisors. If no final action is taken, then the issue raised in the
27 cause of action brought pursuant to subdivision (d) shall be limited
28 to those matters presented at a properly noticed public hearing or
29 to those matters specified in the notice given to the city or clerk
30 of the board of supervisors pursuant to subdivision (d), or both.

31 (c) (1) Except as provided in subdivision (d), no action or
32 proceeding shall be maintained in any of the following cases by
33 any person unless the action or proceeding is commenced and
34 service is made on the legislative body within 90 days after the
35 legislative body's decision:

36 (A) To attack, review, set aside, void, or annul the decision of
37 a legislative body to adopt or amend a general or specific plan.
38 This paragraph does not apply where an action is brought based
39 upon the complete absence of a general plan or a mandatory

1 element thereof, but does apply to an action attacking a general
2 plan or mandatory element thereof on the basis that it is inadequate.

3 (B) To attack, review, set aside, void, or annul the decision of
4 a legislative body to adopt or amend a zoning ordinance.

5 (C) To determine the reasonableness, legality, or validity of any
6 decision to adopt or amend any regulation attached to a specific
7 plan.

8 (D) To attack, review, set aside, void, or annul the decision of
9 a legislative body to adopt, amend, or modify a development
10 agreement. An action or proceeding to attack, review, set aside,
11 void, or annul the decisions of a legislative body to adopt, amend,
12 or modify a development agreement shall only extend to the
13 specific portion of the development agreement that is the subject
14 of the adoption, amendment, or modification. This paragraph
15 applies to development agreements, amendments, and
16 modifications adopted on or after January 1, 1996.

17 (E) To attack, review, set aside, void, or annul any decision on
18 the matters listed in Sections 65901 and 65903, or to determine
19 the reasonableness, legality, or validity of any condition attached
20 to a variance, conditional use permit, or any other permit.

21 (F) Concerning any of the proceedings, acts, or determinations
22 taken, done, or made prior to any of the decisions listed in
23 subparagraphs (A), (B), (C), (D), and (E).

24 (2) In the case of an action or proceeding challenging the
25 adoption or revision of a housing element pursuant to this
26 subdivision, the action or proceeding may, in addition, be
27 maintained if it is commenced and service is made on the
28 legislative body within 60 days following the date that the
29 Department of Housing and Community Development reports its
30 findings pursuant to subdivision (h) of Section 65585.

31 (d) (1) An action or proceeding shall be commenced and the
32 legislative body served within one year after the accrual of the
33 cause of action as provided in this ~~subdivision~~, *subdivision* if the
34 action or proceeding meets both of the following requirements:

35 (±)

36 (A) It is brought in support of or to encourage or facilitate the
37 development of housing that would increase the community's
38 supply of housing affordable to persons and families with low or
39 moderate incomes, as defined in Section 50079.5 of the Health
40 and Safety Code, or with very low incomes, as defined in Section

1 50105 of the Health and Safety Code, or middle-income
2 households, as defined in Section 65008 of this code. This
3 subdivision is not intended to require that the action or proceeding
4 be brought in support of or to encourage or facilitate a specific
5 housing development project.

6 ~~(2)~~

7 (B) It is brought with respect to actions taken pursuant to Article
8 10.6 (commencing with Section 65580) of Chapter ~~3 of this~~
9 ~~division, pursuant to 3, Section 65589.5, 65863.6, 65915, or~~
10 ~~66474.2 or pursuant to Chapter 4.2 (commencing with Section~~
11 ~~65913): 65913), or to challenge the adequacy of an ordinance~~
12 ~~adopted pursuant to Section 65915.~~

13 ~~A~~

14 (2) A cause of action brought pursuant to this subdivision shall
15 not be maintained until 60 days have expired following notice to
16 the city or clerk of the board of supervisors by the party bringing
17 the cause of action, or his or her representative, specifying the
18 deficiencies of the general plan, specific plan, or zoning ordinance.
19 A cause of action brought pursuant to this subdivision shall accrue
20 60 days after notice is filed or the legislative body takes a final
21 action in response to the notice, whichever occurs first. *This notice*
22 *may be filed at any time within three years after an action*
23 *described in subparagraph (B) of paragraph (1).* A notice or cause
24 of action brought by one party pursuant to this subdivision shall
25 not bar filing of a notice and initiation of a cause of action by any
26 other party.

27 (3) *After the adoption of a housing element covering the current*
28 *planning period, no action shall be filed pursuant to this*
29 *subdivision to challenge a housing element covering a prior*
30 *planning period.*

31 (e) Upon the expiration of the time limits provided for in this
32 section, all persons are barred from any further action or
33 proceeding.

34 (f) Notwithstanding Sections 65700 and 65803, or any other
35 provision of law, this section shall apply to charter cities.

36 (g) Except as provided in subdivision (d), this section shall not
37 affect any law prescribing or authorizing a shorter period of
38 limitation than that specified herein.

39 (h) Except as provided in paragraph (4) of subdivision (c), this
40 section shall be applicable to those decisions of the legislative

1 body of a city, county, or city and county made pursuant to this
2 division on or after January 1, 1984.

3 SEC. 3. Section 65589.3 of the Government Code is amended
4 to read:

5 65589.3. (a) In any action filed on or after January 1, 1991,
6 taken to challenge the validity of a housing element, there shall
7 be a rebuttable presumption of the validity of the element or
8 amendment if, pursuant to Section 65585, the department has found
9 that the element or amendment substantially complies with the
10 requirements of this article.

11 (b) *In any action brought against a city, county, or city and*
12 *county to challenge the adequacy of a housing element, if a court*
13 *finds that the adopted housing element or amended housing element*
14 *for the current planning period substantially complies with all of*
15 *the requirements of this article, including, but not limited to, the*
16 *requirements for public participation set forth in paragraph (7)*
17 *of subdivision (c) of Section 65583, the element or amendment*
18 *shall be deemed to satisfy any condition of a state-administered*
19 *housing grant program requiring a department finding that the*
20 *housing element substantially complies with the requirements of*
21 *this article.*

22 SEC. 4. Section 65755 of the Government Code is amended
23 to read:

24 65755. (a) The court shall include, in the order or judgment
25 rendered pursuant to Section 65754, one or more of the following
26 provisions for any or all types or classes of developments or any
27 or all geographic segments of the city, county, or city and county
28 until the city, county, or city and county has substantially complied
29 with the requirements of Article 5 (commencing with Section
30 65300):

31 (1) Suspend the authority of the city, county, or city and county
32 pursuant to Division 13 (commencing with Section 17910) of the
33 Health and Safety Code, to issue building permits, or any category
34 of building permits, and all other related permits, except that the
35 city, county, or city and county shall continue to function as an
36 enforcement agency for review of permit applications for
37 appropriate codes and standards compliance, prior to the issuance
38 of building permits and other related permits for residential housing
39 for that city, county, or city and county.

1 (2) Suspend the authority of the city, county, or city and county,
2 pursuant to Chapter 4 (commencing with Section 65800) to grant
3 any and all categories of zoning changes, variances, or both.

4 (3) Suspend the authority of the city, county, or city and county,
5 pursuant to Division 2 (commencing with Section 66410), to grant
6 subdivision map approvals for any and all categories of subdivision
7 map approvals.

8 (4) Mandate the approval of all applications for building permits,
9 or other related construction permits, for residential housing where
10 a final subdivision map, parcel map, or plot plan has been approved
11 for the project, where the approval will not impact on the ability
12 of the city, county, or city and county to properly adopt and
13 implement an adequate housing element, and where the permit
14 application conforms to all code requirements and other applicable
15 provisions of law except those zoning laws held to be invalid by
16 the final court order, and changes to the zoning ordinances adopted
17 after such final court order which were enacted for the purpose of
18 preventing the construction of a specific residential development.

19 (5) Mandate the approval of any or all final subdivision maps
20 for residential housing projects which have previously received a
21 tentative map approval from the city, county, or city and county
22 pursuant to Division 2 (commencing with Section 66410) when
23 the final map conforms to the approved tentative map, the tentative
24 map has not expired, and where approval will not impact on the
25 ability of the city, county, or city and county to properly adopt and
26 implement an adequate housing element.

27 (6) Mandate that notwithstanding the provisions of Sections
28 66473.5 and 66474, any tentative subdivision map for a residential
29 housing project shall be approved if all of the following
30 requirements are met:

31 (A) The approval of the map will not significantly impair the
32 ability of the city, county, or city and county to adopt and
33 implement those elements or portions thereof of the general plan
34 which have been held to be inadequate.

35 (B) The map complies with all of the provisions of Division 2
36 (commencing with Section 66410), except those parts which would
37 require disapproval of the project due to the inadequacy of the
38 general plan.

1 (C) The approval of the map will not affect the ability of the
2 city, county, or city and county to adopt and implement an adequate
3 housing element.

4 (D) The map is consistent with the portions of the general plan
5 not found inadequate and the proposed revisions, if applicable, to
6 the part of the plan held inadequate.

7 (b) Any order or judgment of a court which includes the
8 remedies described in paragraphs (1), (2), or (3) of subdivision (a)
9 shall exclude from the operation of that order or judgment any
10 action, program, or project required by law to be consistent with
11 a general or specific plan if the court finds that the approval or
12 undertaking of the action, program, or project complies with both
13 of the following requirements:

14 (1) That it will not significantly impair the ability of the city,
15 county, or city and county to adopt or amend all or part of the
16 applicable plan as may be necessary to make the plan substantially
17 comply with the requirements of Article 5 (commencing with
18 Section 65300) in the case of a general plan, or Article 8
19 (commencing with Section 65450) in the case of a specific plan.

20 (2) That it is consistent with those portions of the plan
21 challenged in the action or proceeding and found by the court to
22 substantially comply with applicable provisions of law.

23 The party seeking exclusion from any order or judgment of a
24 court pursuant to this subdivision shall have the burden of showing
25 that the action, program, or project complies with paragraphs (1)
26 and (2).

27 (c) *Notwithstanding Section 65754.4 or subdivisions (a) and*
28 *(b), in any action or proceeding brought pursuant to subdivision*
29 *(d) of Section 65009, no remedy pursuant to this section or*
30 *injunction pursuant to Section 65754.5 shall abrogate, impair, or*
31 *otherwise interfere with the full exercise of the rights and*
32 *protections granted to (1) an applicant for a tentative map pursuant*
33 *to Section 66474.2, or (2) a developer pursuant to Sections 65866*
34 *and 66498.1.*

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ASSEMBLY BILL

No. 1229

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

February 22, 2013

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.

O