

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: John Rahaim, Director, Planning Department
Olson Lee, Director, Mayor's Office of Housing and Community
Development
Tiffany Bohee, Executive Director, Office of Community Investment and
Infrastructure

FROM:  Alisa Somera, Legislative Deputy Director
Board of Supervisors

DATE: June 22, 2016

SUBJECT: LEGISLATION INTRODUCED AND REFERRED TO COMMITTEE

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, which was referred to committee at the June 14, 2016, Board of Supervisors meeting. Supervisor Peskin introduced this matter on May 31, 2016:

File No. 160660

Resolution urging the San Francisco Legislative Delegation to amend or oppose the "By Right Housing Approvals" proposed Trailer Bill in recognition of San Francisco's local planning tools and significant contributions to regional housing development.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: alisa.somera@sfgov.org.

c: Scott Sanchez, Planning Department
Sarah Jones, Planning Department
AnMarie Rodgers, Planning Department
Aaron Starr, Planning Department
Joy Navarrete, Planning Department
Jeanie Poling, Planning Department
Sophie Hayward, Mayor's Office of Housing and Community Development
Claudia Guerra, Office of Community Investment and Infrastructure

1 [Urging the San Francisco Legislative Delegation to Amend or Oppose the Proposed “By
2 Right Housing Approvals” Budget Trailer Bill]

3 **Resolution urging the San Francisco Legislative Delegation to amend or oppose the**
4 **“By Right Housing Approvals” proposed Trailer Bill in recognition of San Francisco’s**
5 **local planning tools and significant contributions to regional housing development.**

6
7 WHEREAS, The people of the City and County of San Francisco have supported and
8 continue to support a development balance of both market rate housing and housing that is
9 affordable for very low-, low-, and moderate-income households (herein collectively referred to
10 as “affordable housing”); and

11 WHEREAS, There are more than 11,000 fully-entitled housing units awaiting
12 construction, and the latest Pipeline Report from the City’s Planning Department shows that
13 there are an additional nearly 20,000 units being reviewed for approval; and

14 WHEREAS, The California Department of Finance (DOF) estimates the Bay Area
15 added 38,300 housing units between April 2010 and January 2014; and

16 WHEREAS, The same DOF calculation counts San Francisco among the top five
17 counties responsible for 51% of the total growth of new regional housing between 2010 and
18 the end of 2013, with San Francisco and San Jose together accounting for 37% of the total
19 regional housing growth during this same period; and

20 WHEREAS, The City and County of San Francisco has adopted rules and policies to
21 streamline the approval of affordable housing; and

22 WHEREAS, The City and County of San Francisco has developed a diverse set of
23 policy priorities and local planning requirements and housing development incentives tailored
24 to accommodate growth within San Francisco’s limited geographic boundaries, while seeking
25 to protect valuable housing resources, small businesses, blue-collar light industrial and local

1 manufacturing work sites, and cultural and social institutions that shelter, sustain, and serve a
2 culturally and economically diverse population; and

3 WHEREAS, Public participation and input into the local planning process is an
4 essential part of the City and County of San Francisco's plans for accommodating local and
5 regional growth; and

6 WHEREAS, As in many other cities, San Francisco's Planning Code was not designed
7 to be a rigid formula, but rather a collection of specific and variable zoning standards to seek a
8 balance between promoting change and protecting existing uses; and

9 WHEREAS, Zoning standards cannot be intelligently or equitably applied by a flat
10 formula or an insular bureaucracy without adverse consequences, thus necessitating a vetting
11 process; and

12 WHEREAS, San Francisco's Planning Code provides for this approved vetting process
13 and outlines requirements for public notice, engagement, and oversight of project approvals in
14 an attempt to protect against these adverse consequences; and

15 WHEREAS, San Francisco's history is replete with examples of the imposition of new
16 development on economically or socially disadvantaged neighborhoods and communities with
17 far-reaching and tragic consequences, including massive displacement; and

18 WHEREAS, Unregulated and poorly controlled market-driven development has
19 incentivized speculation, evictions, small business displacement and demolitions, including
20 but not limited to the International Hotel; and

21 WHEREAS, New development in San Francisco's increasingly dense urban
22 environment has imposed less extreme but still significant negative impacts on existing
23 residents, including permanent shadows and intense wind patterns on scarce playgrounds,
24 open space, and school sites; and

1 WHEREAS, When neighborhoods and communities have lacked the ability to raise
2 objections to major new projects through a public process then the dangers of such adverse
3 and disparate impacts are amplified; and

4 WHEREAS, Without a protected right for the public to participate in the implementation
5 of the San Francisco Planning Code with respect to major projects, the Planning Code would
6 lack safeguards against error, unintended outcomes, and disparate and adverse impacts
7 particularly on disadvantaged communities and the shared urban environment; and

8 WHEREAS, On May 16, 2016, the California Governor introduced a Budget Trailer Bill
9 proposal for "By-Right Housing Approvals" which pre-empts local land use policies and
10 housing development requirements to allow multi-unit development approvals as-of-right if a
11 proposed development includes 10% affordable units, which effectively means all
12 development projects of 10 units or larger in the City and County of San Francisco; and

13 WHEREAS, The "By-Right Housing Approvals" proposal would entitle developers to
14 approvals of major projects with limited or no public oversight or opportunity to address
15 concerns; and

16 WHEREAS, The "By-Right Housing Approvals" proposal exempts projects from a
17 historic review process, effectively ensuring that minority communities in particular are
18 stripped of the only tool they have to evaluate impacts to potential historic and cultural
19 resources; and

20 WHEREAS, The "By-Right Housing Approvals" proposal would remove the Planning
21 Commission from reviewing certain major project proposals and expand the direct role of the
22 Courts to review disputed decisions of Planning Department Staff, imposing potential liability
23 for additional costs and attorneys' fees on the City and County of San Francisco; and

24 WHEREAS, A state pre-emption to establish statewide minimum affordable housing
25 standards should recognize and respect established local Inclusionary Housing requirements

1 that meet or exceed the state standard, and moreover the value of any as-of-right
2 development approval pre-emption over local permitting discretion should be recaptured by an
3 increased “premium” above that local Inclusionary Housing standard, subject to technical
4 analysis to determine that conveyed value to developers under local real estate market
5 conditions; and

6 WHEREAS, The presumed objective of an “approvals streamlining” bill is that
7 development projects are actually constructed as quickly as possible once approved in order
8 to provide housing units “on the ground,” not just as-of-right paper entitlements; and

9 WHEREAS, Any policy to incentivize development should include protection of existing
10 housing from demolition; and

11 WHEREAS, The “By-Right Housing Approvals” trailer bill is intended to incentivize
12 housing development in local jurisdictions that are underperforming with respect to regional
13 housing goals; and

14 WHEREAS, The implications of the Governor’s Trailer Bill are not uniformly applicable
15 throughout the 482 cities and 58 counties of the State of California; and

16 WHEREAS, By-Right Development pre-emptions would restrict the future potential to
17 use development incentives to further increase affordability beyond the existing requirements,
18 and likely undermine the 35% balance of affordable and market-rate housing that San
19 Francisco has been able to achieve; and

20 WHEREAS, The ability for local cities to establish Inclusionary Housing requirements to
21 increase affordable housing in private developments has continued to be hampered by the
22 2011 “Palmer” case, and

23 WHEREAS, Repeated attempts at state law reforms to re-establish local authority to
24 impose inclusionary standards has been contested in the legislature and in 2014 was vetoed
25 by the Governor; and

1 WHEREAS, Displacement of San Francisco residents through real estate speculation
2 continues to be a crisis, with over 800 housing units removed from affordability protections
3 through Ellis Act evictions since 2012, and

4 WHEREAS, Attempted state law reform in 2014 to prevent abuse of the Ellis Act was
5 spearheaded by State Senator Mark Leno and then thwarted by the state legislature; and

6 WHEREAS, Efforts to secure a permanent state funding source for affordable housing
7 production since the 2011 dissolution of the California Redevelopment Agency’s critical tax
8 increment financing continue to be frustrated, including the legislature’s repeated failure to
9 pass a modest document recording fee on real estate transactions as a source for affordable
10 housing; and

11 WHEREAS, The “By-Right Housing Approvals” trailer bill may now be re-titled and
12 considered by and voted on by the Senate and Assembly at any time; now, therefore, be it

13 RESOLVED, That the Board of Supervisors recognizes the impressive legislative
14 records and ongoing and effective work of Assembly Members Chiu and Ting, as well as
15 State Senator Leno (the “San Francisco Legislative Delegation”), in representing the best
16 interests of San Francisco constituents; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
18 Francisco does hereby urge the San Francisco Legislative Delegation to oppose the Trailer
19 Bill in its present form or as otherwise entitled, unless it is amended to address the stated
20 concerns of this resolution; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
22 Francisco does hereby urge the San Francisco Legislative Delegation to offer amendments to
23 the “By-Right Housing Approvals” Trailer Bill including:

- 24 1) a prohibition on the demolition of existing housing; and
- 25

- 1 2) a minimum baseline for as-of-right approval consisting of a set local Inclusionary
2 Housing standard plus a premium increase, as determined by technical analysis;
3 and
- 4 3) a requirement that approved development projects begin construction within 180
5 days of their approval, which is twice the duration allowed in the Trailer Bill for
6 project review; and
- 7 4) that the approval of major developments continue to allow for public review and
8 local discretionary approval as is currently provided by local laws; and, be it

9 FURTHER RESOLVED, That San Francisco is committed to utilizing all affordable
10 housing policy tools to achieve local Housing Balance goals for all income levels and
11 recognizes that a uniform statewide “By-Right Housing Approvals” pre-emption devoid of such
12 amendments would significantly hamper the City’s ability to achieve those Housing Balance
13 goals; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
15 Francisco also urges the state legislature and the Governor to recommit to adopting reforms
16 that prevent abuse of the state Ellis Act, clarifying the authority of local governments to
17 establish Inclusionary Housing requirements, and adopting a permanent source of state
18 financing for affordable housing; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
20 Francisco directs the Clerk of the Board to transmit this resolution to the respective offices of
21 the City Lobbyist and the San Francisco Legislative Delegation upon final passage.