

BOARD of SUPERVISORS



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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: *ll*
for Andrea Ausberry, Assistant Clerk
Land Use and Transportation Committee

DATE: August 4, 2016

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, introduced by Supervisor Peskin on July 26, 2016:

File No. 160876

Motion 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; and ordering the Clerk of the Board of Supervisors of the City and County of San Francisco to transmit the Board of Supervisors' urgent policy position regarding the "By-Right Housing Approvals" proposed Trailer Bill to all 120 members of the State Legislature.

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: andrea.ausberry@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

Eugene Flannery, Mayor's Office of Housing and Community Development
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
2 "By-Right Housing Approvals" Budget Trailer Bill]

3 **Motion 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 **and ordering the Clerk of the Board of Supervisors of the City and County of San**
7 **Francisco to transmit the Board of Supervisors' urgent policy position regarding the**
8 **"By-Right Housing Approvals" proposed Trailer Bill to all 120 members of the State**
9 **Legislature.**

10
11 WHEREAS, San Francisco has a housing crisis that threatens the very fabric of our
12 community, leading to evictions and displacement, making it exceedingly difficult for residents
13 to move, creating huge challenges for growing families to find adequate and affordable living
14 space, undermining economic growth and job creation, and undermining our region's well-
15 earned reputation as a place where people can come from around the country and around the
16 world to make lives for themselves; and

17 WHEREAS, The people who suffer most from our housing crisis are low income people
18 and middle income people; and

19 WHEREAS, In an effort to address our housing crisis, the people of the City and
20 County of San Francisco have supported and continue to support a development balance of
21 both market rate housing and housing that is affordable for very low-, low-, and moderate
22 income households (herein collectively referred to as "affordable housing"); and

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

1 WHEREAS, Housing is not the only need that must be satisfied as of result of
2 increased population growth, and new development should also support transportation and
3 neighborhood infrastructure through impact fees or other private contributions and is often a
4 critical funding stream for neighborhood amenities; and

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

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

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

13 WHEREAS, The City and County of San Francisco has developed a diverse set of
14 policy priorities and local planning requirements and housing development incentives tailored
15 to accommodate growth within San Francisco's limited geographic boundaries, while seeking
16 to protect valuable housing resources, small businesses, blue-collar light industrial and local
17 manufacturing work sites, and cultural and social institutions that shelter, sustain, and serve a
18 culturally and economically diverse population; and

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

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

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

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

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

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

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

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

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

24 WHEREAS, On May 16, 2016, the California Governor introduced a Budget Trailer Bill
25 proposal for "By-Right Housing Approvals" which pre-empts local land use policies and

1 housing development requirements to allow multi-unit development approvals as-of-right if a
2 proposed development includes 10% affordable units, which effectively means all
3 development projects of 10 units or larger in the City and County of San Francisco; and

4 WHEREAS, The “By-Right Housing Approvals” proposal would entitle developers to
5 approvals of major projects with limited or no public oversight or opportunity to address
6 concerns; and

7 WHEREAS, The “By-Right Housing Approvals” proposal exempts projects from a
8 historic review process, effectively ensuring that minority communities in particular are
9 stripped of the only tool they have to evaluate impacts to potential historic and cultural
10 resources; and

11 WHEREAS, The “By-Right Housing Approvals” proposal would remove the Planning
12 Commission from reviewing certain major project proposals and expand the direct role of the
13 Courts to review disputed decisions of Planning Department Staff, imposing potential liability
14 for additional costs and attorneys’ fees on the City and County of San Francisco; and

15 WHEREAS, A state pre-emption to establish statewide minimum affordable housing
16 standards should recognize and respect established local Inclusionary Housing requirements
17 that meet or exceed the state standard, and moreover the value of any as-of-right
18 development approval pre-emption over local permitting discretion should be recaptured by an
19 increased “premium” above that local Inclusionary Housing standard, subject to technical
20 analysis to determine that conveyed value to developers under local real estate market
21 conditions; and

22 WHEREAS, The presumed objective of an “approvals streamlining” bill is that
23 development projects are actually constructed as quickly as possible once approved in order
24 to provide housing units “on the ground,” not just as-of-right paper entitlements; and
25

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

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

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

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

12 WHEREAS, The ability for local cities to establish Inclusionary Housing requirements to
13 increase affordable housing in private developments has continued to be hampered by the
14 2011 “Palmer” case, and

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

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

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

23 WHEREAS, Efforts to secure a permanent state funding source for affordable housing
24 production since the 2011 dissolution of the California Redevelopment Agency’s critical tax
25 increment financing continue to be frustrated, including the legislature’s repeated failure to

1 pass a modest document recording fee on real estate transactions as a source for affordable
2 housing; and

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

5 WHEREAS, A statewide coalition of respected environmental and tenant organizations,
6 labor unions and local officials throughout California have raised serious concerns with
7 respect to the “By-Right Housing Approvals” trailer bill and pushes for substantive
8 amendments; now, therefore, be it

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

13 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
14 Francisco does hereby urge the San Francisco Legislative Delegation to oppose the Trailer
15 Bill in its present form or as otherwise entitled, unless it is amended to address the stated
16 concerns of this resolution; 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 offer amendments to
19 the “By-Right Housing Approvals” Trailer Bill including:

- 20 1) a prohibition on the demolition of existing housing; and
- 21 2) a minimum baseline for as-of-right approval consisting of a set local Inclusionary
22 Housing standard plus a premium increase, as determined by technical analysis; and
- 23 3) a requirement that approved development projects begin construction within twelve
24 months of their approval, which is twice the duration allowed in the Trailer Bill for project
25 review; and

1 4) that the approval of major developments continue to allow for public review and local
2 discretionary approval as is currently provided by local laws; and, be it

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

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

13 FURTHER RESOLVED, That since housing development is also a workforce issue, the
14 Trailer Bill should support competitive wages for construction workers, as well as provide
15 apprenticeship opportunities for disadvantaged San Francisco residents; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
17 Francisco does hereby urge the San Francisco Legislative Delegation to pursue measures to
18 increase state support for public transportation investments, so that as our region and state
19 continue to grow, our increased population and housing stock is supported by equitable and
20 accessible public transit services and can truly be transit-oriented; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors of the City and County of San
22 Francisco directs the Clerk of the Board to transmit this motion to the respective offices of all
23 120 members of the State Legislature, including our San Francisco Legislative Delegation
24 upon final adoption.
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