



Sophie Hahn
Councilmember District 5

REVISED AGENDA MATERIAL for Supplemental Packet 2

Meeting Date: April 24, 2018

Item Number: 27

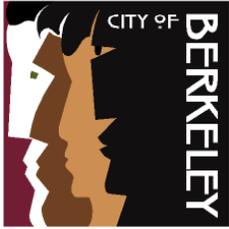
Item Description: Registering Berkeley's Opposition to SB 827 (Wiener, Skinner, Ting): Transit-Rich Housing Bonus

Submitted by: Councilmember Sophie Hahn, Councilmember Harrison, and Mayor Arreguin

Amendments to Resolution.

SB 827 failed to pass out of the Senate Transportation and Housing Committee on April 17, 2018; however it may still be reconsidered in the future. SB 827 is reflective of a trend at the state level: seeking to override local zoning and advocating market-based trickle-down "solutions" that have been shown to accelerate displacement.

Even in the face of SB 827's recent set back, it is important that Berkeley maintain its authority to develop housing policy to support its values and its affordability goals, and add its opposition to SB 827 to the chorus of jurisdictions that have already expressed their concerns through official resolutions.



Berkeley City Council

CONSENT CALENDAR

April 24, 2018

To: Members of the City Council

From: Councilmembers Sophie Hahn, Kate Harrison and Linda Maio,
and Mayor Jesse Arreguin

Subject: Resolution Opposing SB 827 (Wiener, Skinner, Ting):
Transit-Rich Housing Bonus

RECOMMENDATION

Adopt a Resolution Opposing Senate Bill (SB) 827, and send a letter to Senators Wiener, Skinner and ~~Tang~~Ting, and to Assemblymember Thurmond, providing them with the Resolution.

FINANCIAL IMPLICATIONS

None

BACKGROUND

California's Affordability Crisis

California is in the midst of a housing affordability crisis. While housing production has lagged behind job creation and population growth over many years, the current acute crisis is the result of an unprecedented spike in job creation over the last decade. The Bay Area has added almost 600,000 new jobs since 2012, primarily in the tech sector.¹ While jobs are created and filled in a matter of months, building housing to meet the new demand takes many years, even under the very best of circumstances.

For each relatively high paying job, 4.3 other jobs are created, many at lower levels of pay, including those for school teachers, cooks and retail clerks.² All of these new workers, regardless of income, must find housing. At the same time, many companies in the tech sector are experiencing rising profits. In 2017, Alphabet Inc. (Google's parent

¹ <https://www.mercurynews.com/2018/01/19/santa-clara-county-powers-to-big-job-gains-california-jobless-rate-hits-record-low>

² http://www.bayareacouncil.org/community_engagement/new-study-for-every-new-high-tech-job-four-more-created

company in Mountain View) made \$12.6 billion in profits³, while Facebook made \$4.26 billion. 56 Bay Area tech start-ups have valuations of over \$1 billion⁴. By comparison, the City of Berkeley's entire annual budget is approximately \$475 million.

Responsibility for absorbing the many employees who make these profits possible, and for the large number of workers who service and support them, falls on communities across the region. Higher paid workers purchase and rent housing at inflated market rates, while middle and lower income residents - both longtime and newly arrived - are forced to either smaller or more distant homes or, in the worst case, to no home at all.

In Berkeley, approximately 95% of housing is already "market rate," meaning rents or purchase prices are set "at market" at the time of new ownership or tenancy. Newly built Berkeley developments also offer mostly market rate units, with only 10-20% reserved for individuals qualifying for extremely low, very low, low, or moderate income housing, based on the Department of Housing and Urban Development's Area Median Income standards. Berkeley is rightly focused, therefore, on the production of affordable housing. The greatest obstacle to the production of affordable housing in Berkeley, and throughout California, is funding, which neither the Federal Government, the State of California, nor the Bay Area's highly profitable industries currently makes available in any meaningful way.

SB 827

State Senate Bill 827, recently introduced by State Senator Wiener and co-authored by the Senators Skinner and Ting, would exempt new housing near transit lines and major transit stops from many local requirements including residential density controls and design standards. The stated goal of the bill is to address the State's housing crisis by mandating denser and taller zoning near transit. The City of Berkeley supports the goal of addressing the housing crisis and continues to implement measures to stimulate the creation of housing at all income levels. We look forward to opportunities to work with the State legislature to increase access to housing that is affordable at all income levels, but believe SB 827 takes the wrong approach.

SB 827 would automatically upzone new residential developments within a quarter mile of transit corridors and major transit stops to a minimum of 55 or 85 feet, and also automatically upzone a second "ring" around major transit stops, from a quarter to a half mile from the stop, to a minimum of 45 or 55 feet. These height minimums would apply regardless of what the existing underlying zoning might be, meaning that single family,

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low-rise multifamily and other local zoning will no longer have effect, and all new construction would be mandated to be at least 45, 55 or 85 feet, according to SB 827's formulas. A [map of the reach of SB 827](#)'s "upzoning" shows areas that would be affected by the bill's adoption. Nearly all of Berkeley's flatlands and lower hill areas would be subject to SB 827's local zoning override.

The City of Berkeley opposes SB 827 on numerous grounds: lack of meaningful measures to address the affordability crisis; likely direct and indirect displacement of low-income communities and communities of color; likely reduction in transit ridership and increase in use of private vehicles; likely opposition to new transit; and State overreach in usurping local, democratically developed General Plans, Area Plans and Zoning Codes.

Affordability & Displacement

SB 827 includes no required affordable housing, meaning that the new housing required at 45, 55 or 85 feet may not include any affordable units whatsoever. By overriding local zoning laws, granting greater densities without simultaneous affordability requirements and tenant protections, SB 827 will likely result in the replacement of relatively affordable housing currently located near transit with market rate units that are out of reach for existing populations.

The bill also undercuts the work of cities like Berkeley that have adopted community benefit requirements to recapture a portion of increased land values that result from upzoning. Under SB 827, added development potential (height) would be granted without requiring any community benefits. The added value of upzoned properties would thus accrue exclusively to private landowners.

Recent experience in Los Angeles clearly demonstrates the displacement of existing low-income and affordable communities around transit and the resulting decrease in transit ridership and increase in vehicles on the road⁵. Another study conducted by housing economists at UC Berkeley asserts that market rate units are only likely to become affordable to low income renters after 50 years, and that subsidized housing, not market rate housing, is more effective at limiting displacement.⁶ The increased land value of areas near transit will make future affordable units more challenging to develop, permanently pushing those who cannot afford market rates to areas far from their existing communities and places of employment - and from the public transit they used to rely on. Displaced low income workers are forced to drive long distances, while more

⁵ <http://www.governing.com/topics/transportation-infrastructure/gov-los-angeles-transit-ridership-study.html>

⁶ http://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

affluent workers, now living near transit but using it less frequently, continue to drive. Both increase greenhouse gas emissions – the opposite of what TOD was originally intended to produce.

Public transit has traditionally been placed in neighborhoods that already house a large number of low- and moderate-income workers, including long-established communities of color. Using transit corridors and stations as the vectors for state-mandated upzoning therefore tends to target lower- and middle-income neighborhoods for new, market rate development. Almost all of South and West Berkeley, as well as the less affluent areas of Oakland, Richmond and other neighboring communities, would be automatically upzoned by SB 827, while more affluent areas in these cities remain relatively untouched. The intense pressure SB 827 applies is most acute in lower income communities and communities of color - exactly those populations that have previously faced engineered displacement - and who use transit most frequently. Redevelopment programs during the 1950s and 1960s resulted in large scale displacement in the Bay Area and throughout the country, as communities of color were evicted and homes demolished. The displacement that will likely result from SB 827's mandates has the potential, over time, to replicate the mass displacement that occurred under Redevelopment, but without the original intent of replacing existing homes with public affordable housing.

The most fundamental mistake of 20th Century housing policies was a lack of respect for the inherent value of underlying communities, and a top-down, "engineered" approach to providing housing. The best path to undoing negative effects of historically discriminatory housing policies is to *listen to, support and empower communities* that have historically been most impacted those policies. SB 827 eliminates any chance of this dialogue by undercutting existing public, democratic processes and imposing top-down measures that usurp local self-determination.

Recent amendments proposed by Senator Wiener do not sufficiently address these affordability and displacement concerns. While amendments to the bill provide for relocation from a project site and rent subsidies for up to 42 months, it does not provide funds to return to the original location. Projects often take longer than 42 months to construct, leaving displaced tenants in the lurch. Under the pressures created by SB 827, people with fewer resources will simply leave the area. It is well known that once disrupted, communities do not recover.

Rather than address the affordability crisis directly, which would require the State to provide money for permanent affordable housing and support rent and eviction controls, SB 827 takes an approach promoted during the Regan years and applies it to the Bay Area's housing crisis: champion market rate housing, reallocate resources (land and

housing) from low and middle income communities to for-profit developers and more affluent community members, and undercut government. The idea is that without local government “interference,” the housing market will be flooded with so many units that prices will fall precipitously.

Unfortunately, this “trickle down” approach has repeatedly failed to produce positive outcomes for average citizens, while accelerating the transfer of wealth, access and opportunity to corporations and wealthier individuals. Developers are rational economic actors. They will never build more units than can support rents or sales at levels necessary to generate income to cover developers’ financing, operations and profit-making/ROI requirements. Prices may level and even decrease before developers stop building, but only in a major, prolonged economic downturn will there be the kind of precipitous drop in housing costs necessary to reach true affordability.

SB 827 is based on a failed premise of solving the affordability crisis by building market rate housing. In fact, the only way for California - and Berkeley - to obtain the affordable housing required to serve the vast majority of residents who cannot afford market rates is to (1) build new, dedicated affordable units or purchase and restrict existing units at designated levels of affordability, and (2) impose rent controls that allow landlords to make reasonable profits while ensuring that renters are not forced from housing due to rapidly rising rents. SB 827 supports neither of these goals.

Market rate TOD and declining transit ridership

“Transit Oriented Development” (TOD), originally hailed as an antidote to the proliferation of GHG-spewing cars, cannot fulfill its promise when it disrupts existing, transit-riding communities. A study by the Dukakis Center for Urban and Regional Policy finds that increasing market-rate development near transit hubs without simultaneous efforts to preserve and create affordable housing displaces transit users and reduces transit ridership.⁷ A more recent study in Los Angeles⁸ finds that rising housing prices in high-density, high-ridership areas have contributed to increases in car ownership and decreases in transit ridership. In fact, bus ridership has declined precipitously - by over 20% - and overall transit ridership has declined by 15% in Los Angeles, despite billions of dollars invested.⁹

⁷ <http://www.northeastern.edu/dukakiscenter/transportation/transit-oriented-development/maintaining-diversity-in-americas-transit-rich-neighborhoods>. Dukakis Center for Urban and Regional Policy “Maintaining Diversity in America’s Transit-Rich Neighborhoods: Tools for Equitable Neighborhood Change.” October 2010.

⁸ https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf

⁹ <http://www.latimes.com/opinion/op-ed/la-oe-rosenthal-transit-gentrification-metro-ridership-20180220-story.html>

Since higher incomes and wealth correlate with lower use of public transit, the displacement of low income residents in favor of more affluent individuals, even at higher densities, results in lower use of transit overall and a concurrent increase in car miles travelled both by low income individuals now living in areas poorly served by transit, and by more affluent individuals who now live near transit.

SB 827 is also likely to result in communities resisting transit upgrades and new transit investments because their implementation will result in the imposition of SB 827's state mandated zoning standards, overriding established local zoning. Local zoning would in essence be turned over to transit agencies such as BART and AC Transit. Their decisions regarding location of new transit lines and stations, and even simple increases to bus headways, would automatically trigger SB 827's override of local land use over an area a half or full mile wide. Bus stops in particular are easily moved, and service is continually adjusted based on population density and funding. Each of these changes, if service were brought to SB 827's thresholds, would now also carry the power to impose automatic override of local zoning.

State Overreach

SB 827 would also override local, democratic planning processes and zoning laws. It sets an alarming precedent regarding the ability of California cities to respond to their unique topography, land use patterns and historic and cultural assets. It would strip localities of power over important aspects of their democratic zoning and planning processes within the catchment area, automatically exempting new housing from "maximum controls on residential density, maximum controls on floor area ratio, minimum parking requirements, maximum height limitations, and zoning or design controls."¹⁰ This would effectively usurp the ability of local citizens and their elected representatives to shape their own communities, overriding carefully considered General and Area Plans and Zoning Ordinances and imposing rigid, one-size-fits all standards across every city and neighborhood with significant transit in the State of California.

SB 827 has raised a number of concerns in cities across the State. The height minimums in SB 827 would apply regardless of what the existing underlying zoning might be, meaning that single family, low-rise multifamily and other local zoning will no longer have effect, and all new construction near transit corridors will be mandated to be at least 45, 55 or 85 feet, according to SB 827's formulas.

¹⁰ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB827

Berkeley is home to important historic and cultural resources, including Ohlone sites, early Californian structures, homes and businesses owned by Japanese-Americans subject to internment during WWII, and other architecturally and culturally significant locations, neighborhoods and structures. Local land use laws and processes take all of these, and other important factors, into account, and invite community input into decisions that affect people's daily lives and livelihoods. SB 827 does not. A broad-brush bill cannot anticipate the many effects that it will have on neighborhoods and historic and cultural resources across the State; local governments are best equipped to understand impacts and make decisions that best serve their communities.

Berkeley Supports In-Fill Development Through Public Processes

Berkeley strongly supports the addition of new housing to the community, including many measures to create new housing: permitting ADUs on all single family parcels “by right,” upzoning along major streets and throughout the downtown, providing funding for acquisition of properties to remain affordable in perpetuity, and making public land available for building low income housing.

For the past forty years, Berkeley has had a balanced land use policy that has focused on building dense housing along major commercial corridors, including in the Downtown, while preserving single-family neighborhoods. The 1973 Neighborhood Preservation Ordinance (NPO), adopted by Berkeley’s voters, specifically discouraged the widespread demolition of older buildings, and encouraged preservation and smart infill. SB 827 would override the voter-approved NPO, and decades of community plans and land use regulations, automatically giving developers huge increases in property values with no required affordable housing in return. It is a heavy handed, and unnecessary overreach by the state government.

In the past decade, Berkeley has taken numerous steps to promote infill development of the City, denser housing standards, and to preserve and increase the City’s stock of affordable housing.

- In 2002, the City of Berkeley adopted a new General Plan that focuses on promoting transit oriented development along major arterials, while preserving the scale and character of residential neighborhoods.
- In 2007, the City of Berkeley designated many commercial corridors as Priority Development Areas, to encourage denser infill housing, and to compete for regional grant funds. Telegraph, Shattuck, University, and San Pablo were all designated as PDAs.

- In 2009, the City of Berkeley adopted a Climate Action Plan, which identified transportation emissions as a principal source of city greenhouse gas emissions, and included focused strategies to encourage transit oriented development to reduce vehicle miles traveled.
- In 2010, Berkeley voters approved the initiation of a robust **Downtown Area Planning Process**, aimed at creating a more sustainable downtown area and promoting denser development near transit.
- In 2012, the City Council approved the **Downtown Area Plan**, a key component of which was the addition of tall buildings, and bringing new housing to the downtown.
- Through the City's **Inclusionary Housing Ordinance** and **Affordable Housing Mitigation Fee**, housing developments are required to make some contribution to the city's affordable housing stock, either by including affordable housing units or by paying an in-lieu fee.
- In addition to City-wide plans, Berkeley has also undertaken numerous area-specific plans, most recently the **Adeline Plan**. This planning effort is driven by community process, and will eventually be used to direct changes in land use and development.
- The City is considering increasing housing production in the Southside Area through density bonuses, waiving parking requirements and other land use incentives.
- The City **expedites** and **waives fees** for certain projects, including those receiving Affordable Housing Trust Fund money.
- The City Council has also worked to encourage the development of accessory dwelling units (ADUs) as supplemental housing.
- The City Council has set aside funds to acquire existing rental properties and maintain them as affordable in perpetuity.

Berkeley is not struggling to meet its Regional Housing Needs Allocation (RHNA) goals for market rate housing; in fact, at the midpoint of the reporting period, over 90% of Berkeley's RHNA standard for market-rate housing has already been built, and over 200% has been permitted. The true need, in Berkeley and around the Bay Area, is for

affordable housing, not market rate units. SB 827 does nothing to further this goal, and actively undermines the incentives for affordability that Berkeley and many other cities have already implemented. If the State is serious about promoting growth of affordable housing, they must allocate the resources for communities to do so.

Conclusion

If SB 827 passes, measures undertaken by the City of Berkeley to improve its planning processes and to preserve and increase affordable housing would be effectively moot. It breaks the social contract that democratically established zoning represents, and would permanently disrupt more than half of the City. Areas with middle and lower-income residents will experience accelerated displacement, with no intent of providing anything but inaccessible market rate units.

Berkeley welcomes additional housing, and we are working to ensure a variety of housing types and levels of affordability are built throughout the city, in ways that support the diversity, culture and community that define us. There are better ways to achieve regional and statewide housing goals: with public investments, incentives and opportunities. Rather than support any of these measures, SB 827 takes a wrecking ball to Berkeley and to other communities that welcome and invest in transit. We oppose it in the strongest possible terms.

We join these and other Cities and Organizations in expressing concerns about or opposition to SB 827:

The League of California Cities
Sierra Club California
ACT-LA
S.F. Community Tenants Association
LA Tenants Union
The California Rural Legal Assistance Foundation
Housing California
Western Center on Law & Poverty
City of San Francisco
City of Los Angeles

See following page for a list of additional cities, compiled by the League of Cities

Cities Opposed to SB 827 (Wiener) as of 4/2/18 (Add Los Angeles to the below list)

Agoura Hills	La Verne	Riverbank
Albany	Laguna Hills	Rosemead
Azusa	Lakeport	Ross
Baldwin Park	Lakewood	San Anselmo
Beverly Hills	Lawndale	San Marino
Brentwood	Livermore	San Rafael
Calabasas	Lodi	Signal Hill
Chino Hills	Malibu	South El Monte
Claremont	Manhattan Beach	South Pasadena
Cloverdale	Manteca	Sunnyvale
Colton	Milpitas	Torrance
Compton	Modesto	Tulare
Corte Madera	Monrovia	Vacaville
Costa Mesa	Monterey Park	Vallejo
Covina	Mountain View	Villa Park
Cupertino	Mt Shasta	Visalia
Cypress	Napa	Waterford
Danville	Newark	West Covina
Diamond Bar	Norwalk	Westlake Village
Downey	Novato	Whittier
Duarte	Ontario	Windsor
Dublin	Orinda	Yorba Linda
El Segundo	Palmdale	Newport Beach
Fontana	Palo Alto	Long Beach
Foster City	Pasadena	Redwood Empire Division
Fountain Valley	Petaluma	West Hollywood
Fremont	Pico Rivera	Paramount
Glendora	Pinole	Covina
Goleta	Pleasant Hill	Solvang
Grand Terrace	Pleasanton	Lafayette
Hercules	Rancho Cordova	Indio
Hesperia	Rancho Santa Margarita	Indian Wells
Hillsborough	Rancho Palos Verdes	
Huntington Beach	Redondo Beach	
La Canada Flintridge	Ripon	

ENVIRONMENTAL SUSTAINABILITY

This recommendation supports Berkeley's environmental sustainability goals by helping to ensure that new housing in Berkeley and throughout California results in increased use of public transit and decreases in GHGs region-wide.

CONTACT

Councilmember Sophie Hahn District 5 (510) 981-7150

Councilmember Kate Harrison, District 4 (510) 981-7140

ATTACHMENTS

1. Resolution Opposing State Senate Bill 827 (Wiener)

RESOLUTION NO. ##,###-N.S.

RESOLUTION OPPOSING STATE SENATE BILL 827 (Wiener)

WHEREAS, the City of Berkeley is committed to meeting its Regional Housing Needs Allocation Goals at all levels of affordability, and has upzoned transit corridors and the Downtown, resulting in significant new development; and

WHEREAS, the City's General Plan prioritizes the construction of dense infill housing along major commercial corridors to meet housing and environmental goals; and

WHEREAS, Berkeley is committed to retaining existing affordable housing and increasing housing available to support people of all backgrounds and income levels; and

WHEREAS, Berkeley is one of the densest cities in California and provides a wide variety of housing types, serving diverse ages, family structures, incomes and abilities; and

WHEREAS, despite State level undercutting of Rent Control, Berkeley maintains strong renter and eviction controls to protect residents from displacement due to rapidly rising rents; and

WHEREAS, Berkeley has many historic and cultural assets it seeks to protect, including sites of Ohlone villages, Early California era structures, homes and businesses owned by Japanese-Americans subject to internment during WWII and other architecturally and culturally significant sites, neighborhoods and structures; and

WHEREAS, SB 827 was ~~recently~~ introduced in the California State Legislature by Senator Wiener and co-authors Skinner and Ting, originally seeking to exempting housing projects within a half mile radius of a major transit stop or a quarter mile radius of a high-quality transit corridor, from local residential density, floor area ratio, parking, height and other local zoning and design requirements; and

WHEREAS, SB 827 would have impose~~s~~ an extreme and unnecessary state override of locally developed General Plans and Zoning Ordinances, and is just one of numerous state-level attempts to override local zoning authority; and

WHEREAS, ~~the~~ SB 827, even as amended, includes no incentives or requirements failed to adequately provide for affordable housing nor adequate protections against

displacement of existing homes and affordable units, promoting the development of market-rate housing in existing neighborhoods, including in low-income communities and communities of color; and

WHEREAS, development of market rate housing near transit without simultaneous affordability protections results in displacement of core transit riders already living near transit; and

WHEREAS, SB 827 and other state override of local zoning undercuts democratic planning and permitting processes that protect historically disadvantaged communities from removal or displacement, and embody the social contract between residents and their local governments; and

WHEREAS, SB 827 would have discouraged transit investment in communities, ~~due to the state override of local zoning that such investments will impose~~ as new transit would have simultaneously imposed the state override of local zoning; and

WHEREAS, by seeking to promote a trickle down approach to addressing the housing crisis, SB 827 ~~will~~ would have exacerbated the Bay Area and Berkeley's affordability crisis and ~~will~~ pushed low- and moderate-income families further from city centers, employment, and the public transit they rely on; and

WHEREAS, attempts to undo the deleterious effects of historically discriminatory land use policies should empower the communities most affected by those policies; and

WHEREAS, the City of Berkeley has ~~already~~ taken major steps to promote denser development near public transit, including the 2002 General Plan, 2009 Climate Action Plan, Downtown Area Plan, the Adeline Plan, the Inclusionary Housing Ordinance and Affordable Housing Mitigation Fee, Fee Waivers for Affordable Housing Projects receiving Affordable Housing Trust Fund Money, and allowed accessory dwelling units "by-right," all of which have benefited from a robust public process; and

WHEREAS, SB 827 and similar legislation ~~fails~~ to recognize the efforts of urban cities like Berkeley to meet our regional housing needs, and ~~will~~ undermine the many efforts undertaken by the City of Berkeley to improve its planning process and to preserve and increase affordable housing; and:-

WHEREAS, even in light of the Bill's current status, the City of Berkeley wishes to add its official opposition to the record.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley states its strongly oppositiones to State Senate Bill 827, which would have overrideoverridden local, democratic land use regulations ~~within a quarter or half mile of transit while without~~ offering ~~no~~ meaningful affordable housing, ~~or~~ community benefits, or ~~meaningful~~ protections against displacement.



Berkeley City Council

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⁶ http://www.urbandisplacement.org/sites/default/files/images/udp_research_brief_052316.pdf

affluent workers, now living near transit but using it less frequently, continue to drive. Both increase greenhouse gas emissions – the opposite of what TOD was originally intended to produce.

Public transit has traditionally been placed in neighborhoods that already house a large number of low- and moderate-income workers, including long-established communities of color. Using transit corridors and stations as the vectors for state-mandated upzoning therefore tends to target lower- and middle-income neighborhoods for new, market rate development. Almost all of South and West Berkeley, as well as the less affluent areas of Oakland, Richmond and other neighboring communities, would be automatically upzoned by SB 827, while more affluent areas in these cities remain relatively untouched. The intense pressure SB 827 applies is most acute in lower income communities and communities of color - exactly those populations that have previously faced engineered displacement - and who use transit most frequently. Redevelopment programs during the 1950s and 1960s resulted in large scale displacement in the Bay Area and throughout the country, as communities of color were evicted and homes demolished. The displacement that will likely result from SB 827's mandates has the potential, over time, to replicate the mass displacement that occurred under Redevelopment, but without the original intent of replacing existing homes with public affordable housing.

The most fundamental mistake of 20th Century housing policies was a lack of respect for the inherent value of underlying communities, and a top-down, "engineered" approach to providing housing. The best path to undoing negative effects of historically discriminatory housing policies is to *listen to, support and empower communities* that have historically been most impacted those policies. SB 827 eliminates any chance of this dialogue by undercutting existing public, democratic processes and imposing top-down measures that usurp local self-determination.

Recent amendments proposed by Senator Wiener do not sufficiently address these affordability and displacement concerns. While amendments to the bill provide for relocation from a project site and rent subsidies for up to 42 months, it does not provide funds to return to the original location. Projects often take longer than 42 months to construct, leaving displaced tenants in the lurch. Under the pressures created by SB 827, people with fewer resources will simply leave the area. It is well known that once disrupted, communities do not recover.

Rather than address the affordability crisis directly, which would require the State to provide money for permanent affordable housing and support rent and eviction controls, SB 827 takes an approach promoted during the Regan years and applies it to the Bay Area's housing crisis: champion market rate housing, reallocate resources (land and

housing) from low and middle income communities to for-profit developers and more affluent community members, and undercut government. The idea is that without local government “interference,” the housing market will be flooded with so many units that prices will fall precipitously.

Unfortunately, this “trickle down” approach has repeatedly failed to produce positive outcomes for average citizens, while accelerating the transfer of wealth, access and opportunity to corporations and wealthier individuals. Developers are rational economic actors. They will never build more units than can support rents or sales at levels necessary to generate income to cover developers’ financing, operations and profit-making/ROI requirements. Prices may level and even decrease before developers stop building, but only in a major, prolonged economic downturn will there be the kind of precipitous drop in housing costs necessary to reach true affordability.

SB 827 is based on a failed premise of solving the affordability crisis by building market rate housing. In fact, the only way for California - and Berkeley - to obtain the affordable housing required to serve the vast majority of residents who cannot afford market rates is to (1) build new, dedicated affordable units or purchase and restrict existing units at designated levels of affordability, and (2) impose rent controls that allow landlords to make reasonable profits while ensuring that renters are not forced from housing due to rapidly rising rents. SB 827 supports neither of these goals.

Market rate TOD and declining transit ridership

“Transit Oriented Development” (TOD), originally hailed as an antidote to the proliferation of GHG-spewing cars, cannot fulfill its promise when it disrupts existing, transit-riding communities. A study by the Dukakis Center for Urban and Regional Policy finds that increasing market-rate development near transit hubs without simultaneous efforts to preserve and create affordable housing displaces transit users and reduces transit ridership.⁷ A more recent study in Los Angeles⁸ finds that rising housing prices in high-density, high-ridership areas have contributed to increases in car ownership and decreases in transit ridership. In fact, bus ridership has declined precipitously - by over 20% - and overall transit ridership has declined by 15% in Los Angeles, despite billions of dollars invested.⁹

⁷ <http://www.northeastern.edu/dukakiscenter/transportation/transit-oriented-development/maintaining-diversity-in-americas-transit-rich-neighborhoods>. Dukakis Center for Urban and Regional Policy “Maintaining Diversity in America’s Transit-Rich Neighborhoods: Tools for Equitable Neighborhood Change.” October 2010.

⁸ https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf

⁹ <http://www.latimes.com/opinion/op-ed/la-oe-rosenthal-transit-gentrification-metro-ridership-20180220-story.html>

Since higher incomes and wealth correlate with lower use of public transit, the displacement of low income residents in favor of more affluent individuals, even at higher densities, results in lower use of transit overall and a concurrent increase in car miles travelled both by low income individuals now living in areas poorly served by transit, and by more affluent individuals who now live near transit.

SB 827 is also likely to result in communities resisting transit upgrades and new transit investments because their implementation will result in the imposition of SB 827's state mandated zoning standards, overriding established local zoning. Local zoning would in essence be turned over to transit agencies such as BART and AC Transit. Their decisions regarding location of new transit lines and stations, and even simple increases to bus headways, would automatically trigger SB 827's override of local land use over an area a half or full mile wide. Bus stops in particular are easily moved, and service is continually adjusted based on population density and funding. Each of these changes, if service were brought to SB 827's thresholds, would now also carry the power to impose automatic override of local zoning.

State Overreach

SB 827 would also override local, democratic planning processes and zoning laws. It sets an alarming precedent regarding the ability of California cities to respond to their unique topography, land use patterns and historic and cultural assets. It would strip localities of power over important aspects of their democratic zoning and planning processes within the catchment area, automatically exempting new housing from "maximum controls on residential density, maximum controls on floor area ratio, minimum parking requirements, maximum height limitations, and zoning or design controls."¹⁰ This would effectively usurp the ability of local citizens and their elected representatives to shape their own communities, overriding carefully considered General and Area Plans and Zoning Ordinances and imposing rigid, one-size-fits all standards across every city and neighborhood with significant transit in the State of California.

SB 827 has raised a number of concerns in cities across the State. The height minimums in SB 827 would apply regardless of what the existing underlying zoning might be, meaning that single family, low-rise multifamily and other local zoning will no longer have effect, and all new construction near transit corridors will be mandated to be at least 45, 55 or 85 feet, according to SB 827's formulas.

¹⁰ https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB827

Berkeley is home to important historic and cultural resources, including Ohlone sites, early Californian structures, homes and businesses owned by Japanese-Americans subject to internment during WWII, and other architecturally and culturally significant locations, neighborhoods and structures. Local land use laws and processes take all of these, and other important factors, into account, and invite community input into decisions that affect people's daily lives and livelihoods. SB 827 does not. A broad-brush bill cannot anticipate the many effects that it will have on neighborhoods and historic and cultural resources across the State; local governments are best equipped to understand impacts and make decisions that best serve their communities.

Berkeley Supports In-Fill Development Through Public Processes

Berkeley strongly supports the addition of new housing to the community, including many measures to create new housing: permitting ADUs on all single family parcels “by right,” upzoning along major streets and throughout the downtown, providing funding for acquisition of properties to remain affordable in perpetuity, and making public land available for building low income housing.

For the past forty years, Berkeley has had a balanced land use policy that has focused on building dense housing along major commercial corridors, including in the Downtown, while preserving single-family neighborhoods. The 1973 Neighborhood Preservation Ordinance (NPO), adopted by Berkeley’s voters, specifically discouraged the widespread demolition of older buildings, and encouraged preservation and smart infill. SB 827 would override the voter-approved NPO, and decades of community plans and land use regulations, automatically giving developers huge increases in property values with no required affordable housing in return. It is a heavy handed, and unnecessary overreach by the state government.

In the past decade, Berkeley has taken numerous steps to promote infill development of the City, denser housing standards, and to preserve and increase the City’s stock of affordable housing.

- In 2002, the City of Berkeley adopted a new General Plan that focuses on promoting transit oriented development along major arterials, while preserving the scale and character of residential neighborhoods.
- In 2007, the City of Berkeley designated many commercial corridors as Priority Development Areas, to encourage denser infill housing, and to compete for regional grant funds. Telegraph, Shattuck, University, and San Pablo were all designated as PDAs.

- In 2009, the City of Berkeley adopted a Climate Action Plan, which identified transportation emissions as a principal source of city greenhouse gas emissions, and included focused strategies to encourage transit oriented development to reduce vehicle miles traveled.
- In 2010, Berkeley voters approved the initiation of a robust **Downtown Area Planning Process**, aimed at creating a more sustainable downtown area and promoting denser development near transit.
- In 2012, the City Council approved the **Downtown Area Plan**, a key component of which was the addition of tall buildings, and bringing new housing to the downtown.
- Through the City's **Inclusionary Housing Ordinance** and **Affordable Housing Mitigation Fee**, housing developments are required to make some contribution to the city's affordable housing stock, either by including affordable housing units or by paying an in-lieu fee.
- In addition to City-wide plans, Berkeley has also undertaken numerous area-specific plans, most recently the **Adeline Plan**. This planning effort is driven by community process, and will eventually be used to direct changes in land use and development.
- The City is considering increasing housing production in the Southside Area through density bonuses, waiving parking requirements and other land use incentives.
- The City **expedites** and **waives fees** for certain projects, including those receiving Affordable Housing Trust Fund money.
- The City Council has also worked to encourage the development of accessory dwelling units (ADUs) as supplemental housing.
- The City Council has set aside funds to acquire existing rental properties and maintain them as affordable in perpetuity.

Berkeley is not struggling to meet its Regional Housing Needs Allocation (RHNA) goals for market rate housing; in fact, at the midpoint of the reporting period, over 90% of Berkeley's RHNA standard for market-rate housing has already been built, and over 200% has been permitted. The true need, in Berkeley and around the Bay Area, is for

affordable housing, not market rate units. SB 827 does nothing to further this goal, and actively undermines the incentives for affordability that Berkeley and many other cities have already implemented. If the State is serious about promoting growth of affordable housing, they must allocate the resources for communities to do so.

Conclusion

If SB 827 passes, measures undertaken by the City of Berkeley to improve its planning processes and to preserve and increase affordable housing would be effectively moot. It breaks the social contract that democratically established zoning represents, and would permanently disrupt more than half of the City. Areas with middle and lower-income residents will experience accelerated displacement, with no intent of providing anything but inaccessible market rate units.

Berkeley welcomes additional housing, and we are working to ensure a variety of housing types and levels of affordability are built throughout the city, in ways that support the diversity, culture and community that define us. There are better ways to achieve regional and statewide housing goals: with public investments, incentives and opportunities. Rather than support any of these measures, SB 827 takes a wrecking ball to Berkeley and to other communities that welcome and invest in transit. We oppose it in the strongest possible terms.

We join these and other Cities and Organizations in expressing concerns about or opposition to SB 827:

The League of California Cities
Sierra Club California
ACT-LA
S.F. Community Tenants Association
LA Tenants Union
The California Rural Legal Assistance Foundation
Housing California
Western Center on Law & Poverty
City of San Francisco
City of Los Angeles

See following page for a list of additional cities, compiled by the League of Cities

Cities Opposed to SB 827 (Wiener) as of 4/2/18 (Add Los Angeles to the below list)

Agoura Hills	La Verne	Riverbank
Albany	Laguna Hills	Rosemead
Azusa	Lakeport	Ross
Baldwin Park	Lakewood	San Anselmo
Beverly Hills	Lawndale	San Marino
Brentwood	Livermore	San Rafael
Calabasas	Lodi	Signal Hill
Chino Hills	Malibu	South El Monte
Claremont	Manhattan Beach	South Pasadena
Cloverdale	Manteca	Sunnyvale
Colton	Milpitas	Torrance
Compton	Modesto	Tulare
Corte Madera	Monrovia	Vacaville
Costa Mesa	Monterey Park	Vallejo
Covina	Mountain View	Villa Park
Cupertino	Mt Shasta	Visalia
Cypress	Napa	Waterford
Danville	Newark	West Covina
Diamond Bar	Norwalk	Westlake Village
Downey	Novato	Whittier
Duarte	Ontario	Windsor
Dublin	Orinda	Yorba Linda
El Segundo	Palmdale	Newport Beach
Fontana	Palo Alto	Long Beach
Foster City	Pasadena	Redwood Empire Division
Fountain Valley	Petaluma	West Hollywood
Fremont	Pico Rivera	Paramount
Glendora	Pinole	Covina
Goleta	Pleasant Hill	Solvang
Grand Terrace	Pleasanton	Lafayette
Hercules	Rancho Cordova	Indio
Hesperia	Rancho Santa Margarita	Indian Wells
Hillsborough	Rancho Palos Verdes	
Huntington Beach	Redondo Beach	
La Canada Flintridge	Ripon	

ENVIRONMENTAL SUSTAINABILITY

This recommendation supports Berkeley's environmental sustainability goals by helping to ensure that new housing in Berkeley and throughout California results in increased use of public transit and decreases in GHGs region-wide.

CONTACT

Councilmember Sophie Hahn District 5 (510) 981-7150

Councilmember Kate Harrison, District 4 (510) 981-7140

ATTACHMENTS

1. Resolution Opposing State Senate Bill 827 (Wiener)

RESOLUTION NO. ##,###-N.S.

RESOLUTION OPPOSING STATE SENATE BILL 827 (Wiener)

WHEREAS, the City of Berkeley is committed to meeting its Regional Housing Needs Allocation Goals at all levels of affordability, and has upzoned transit corridors and the Downtown, resulting in significant new development; and

WHEREAS, the City's General Plan prioritizes the construction of dense infill housing along major commercial corridors to meet housing and environmental goals; and

WHEREAS, Berkeley is committed to retaining existing affordable housing and increasing housing available to support people of all backgrounds and income levels; and

WHEREAS, Berkeley is one of the densest cities in California and provides a wide variety of housing types, serving diverse ages, family structures, incomes and abilities; and

WHEREAS, despite State level undercutting of Rent Control, Berkeley maintains strong renter and eviction controls to protect residents from displacement due to rapidly rising rents; and

WHEREAS, Berkeley has many historic and cultural assets it seeks to protect, including sites of Ohlone villages, Early California era structures, homes and businesses owned by Japanese-Americans subject to internment during WWII and other architecturally and culturally significant sites, neighborhoods and structures; and

WHEREAS, SB 827 was introduced in the California State Legislature by Senator Wiener and co-authors Skinner and Ting, originally seeking to exempt housing projects within a half mile radius of a major transit stop or a quarter mile radius of a high-quality transit corridor, from local residential density, floor area ratio, parking, height and other local zoning and design requirements; and

WHEREAS, SB 827 would have imposed an extreme and unnecessary state override of locally developed General Plans and Zoning Ordinances, and is just one of numerous state-level attempts to override local zoning authority; and

WHEREAS, SB 827, even as amended, failed to adequately provide for affordable housing or adequate protections against displacement of existing homes and affordable

units, promoting the development of market-rate housing in existing neighborhoods, including in low-income communities and communities of color; and

WHEREAS, development of market rate housing near transit without simultaneous affordability protections results in displacement of core transit riders already living near transit; and

WHEREAS, SB 827 and other state override of local zoning undercuts democratic planning and permitting processes that protect historically disadvantaged communities from removal or displacement, and embody the social contract between residents and their local governments; and

WHEREAS, SB 827 would have discouraged transit investment in communities, as new transit would have simultaneously imposed the state override of local zoning; and

WHEREAS, by seeking to promote a trickle down approach to addressing the housing crisis, SB 827 would have exacerbated the Bay Area and Berkeley's affordability crisis and pushed low- and moderate-income families further from city centers, employment, and the public transit they rely on; and

WHEREAS, attempts to undo the deleterious effects of historically discriminatory land use policies should empower the communities most affected by those policies; and

WHEREAS, the City of Berkeley has taken major steps to promote denser development near public transit, including the 2002 General Plan, 2009 Climate Action Plan, Downtown Area Plan, the Adeline Plan, the Inclusionary Housing Ordinance and Affordable Housing Mitigation Fee, Fee Waivers for Affordable Housing Projects receiving Affordable Housing Trust Fund Money, and allowed accessory dwelling units "by-right," all of which have benefited from a robust public process; and

WHEREAS, SB 827 and similar legislation fail to recognize the efforts of urban cities like Berkeley to meet our regional housing needs, and undermine the many efforts undertaken by the City of Berkeley to improve its planning process and to preserve and increase affordable housing; and

WHEREAS, even in light of the Bill's current status, the City of Berkeley wishes to add its official opposition to the record.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City of Berkeley states its strong opposition to State Senate Bill 827, which would have

overridden local, democratic land use regulations without offering meaningful affordable housing, community benefits, or protections against displacement.