
THIRD READING

Bill No: AB 2923
Author: Chiu (D) and Grayson (D), et al.
Amended: 8/17/18 in Senate
Vote: 21

SENATE TRANS. & HOUSING COMMITTEE: 8-3, 6/26/18
AYES: Beall, Cannella, Allen, Dodd, Galgiani, Roth, Skinner, Wiener
NOES: Gaines, Morrell, Vidak
NO VOTE RECORDED: McGuire, Wieckowski

SENATE GOVERNANCE & FIN. COMMITTEE: 5-2, 6/27/18
AYES: McGuire, Beall, Hernandez, Hertzberg, Lara
NOES: Nguyen, Moorlach

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/16/18
AYES: Portantino, Beall, Bradford, Hill, Wiener
NOES: Bates, Nielsen

ASSEMBLY FLOOR: 42-32, 5/31/18 - See last page for vote

SUBJECT: San Francisco Bay Area Rapid Transit District: transit-oriented development

SOURCE: Non-Profit Housing Association of Northern California
State Building and Construction Trades Council (AFL-CIO)

DIGEST: This bill requires, until January 1, 2029, cities and counties to adopt zoning standards in the San Francisco Bay Area Rapid Transit District's (BART) transit-oriented development (TOD) guidelines and establishes a streamlined approval process for certain projects on BART-owned land.

ANALYSIS:

Existing law:

- 1) States, pursuant to Article XI, Section 7, of the California Constitution, that a city or county may make and enforce within its limits all local, police, sanitary,

and other ordinances and regulations not in conflict with general laws. Local governments use their police power to enact zoning ordinances that shape development, including setting maximum densities for housing units, minimum numbers of required parking spaces, and setbacks to preserve privacy. These ordinances can also include conditions on development to address aesthetics, community impacts, or other particular site-specific considerations.

- 2) States, pursuant to Article XI, Section 5, of the California Constitution, that it shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters that shall be subject to general laws. States that city charters adopted pursuant to the Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith.
- 3) Requires each county and city to adopt a general plan that sets out planned uses for all of the area covered by the plan.
- 4) Establishes a streamlined, ministerial process for approving housing developments that are in compliance with the applicable objective local planning standards—including the general plan, zoning ordinances, and objective design review standards.
- 5) Requires, pursuant to the California Environmental Quality Act (CEQA), state and local agencies to identify—and, where possible, mitigate—environmental impacts of projects.
- 6) Creates BART as a special district to provide transit services in the San Francisco Bay Area. BART is governed by a nine-member board that is elected from districts that are based on BART’s service area. However, the parts of the BART system that lie south of the City and County of San Francisco on the Peninsula are not represented on the board.

This bill:

- 1) Defines an “eligible TOD project” to mean a TOD project that meets all the following conditions:
 - a) The project is located on an infill site, as defined in existing law;

- b) The land for the project was not acquired through eminent domain after July 1, 2018.
 - c) The land for the project:
 - i) Is owned by BART;
 - ii) Forms a contiguous area of at least 0.25 acres;
 - iii) Has at least 75 percent of its area located within one-half mile of an existing or planned BART station entrance; and
 - iv) Is located within an area represented on the BART board.
 - d) The project is on land owned by BART on July 1, 2018 if it is within a half mile of a station existing as of July 1, 2018;
 - e) For a planned station, the BART station has been approved by the local jurisdiction with land use authority over that station and CEQA review has been completed for the station.
- 2) Defines a “TOD project” to mean a project on BART land with 50 percent of the floor area of the project dedicated to residential uses, unless a local specific plan provides for a different amount of residential use on the site.
 - 3) Requires, notwithstanding any other law, the BART board of directors (board) to adopt TOD zoning standards for height, density, parking, and floor area ratio that apply to an eligible TOD project by July 1, 2020.
 - 4) Provides that adopted TOD standards establish, for each station, the lowest permissible height, density, and floor area ratio, and the highest maximum parking minimums and maximums.
 - 5) Sets the TOD standards in the 2017 version of BART’s TOD guidelines as the minimum standards, and establishes a maximum height of the greater of either:
 - a) The highest approved height of in nearby areas, as defined;
 - b) 150% of the target height in the 2017 BART TOD guidelines.
 - 6) Provides that if BART does not adopt standards by July 1, 2020, the standards in the 2017 TOD guidelines become the TOD zoning standards until BART adopts its own TOD standards.
 - 7) Establishes a minimum floor area ratio of 0.6 times the height designated in the TOD zoning standards, if no floor area ratio is designated by BART.

- 8) Requires BART, prior to adopting TOD zoning standards, to:
 - a) Hold a public hearing and conduct outreach to local governments and communities of concern around each station.
 - b) Consult, in a specified manner, with each jurisdiction in which a station is located, as well as any relevant infrastructure agencies.
 - c) Make available draft standards to the public 30 days before a hearing to consider adopting TOD zoning standards.
 - d) Adopt standards at a separate hearing after the initial hearing, and approve travel demand management requirements prior to or simultaneously with the adoption of TOD zoning standards.
- 9) Requires a city or county to adopt an ordinance that conforms to the BART TOD zoning standards within two years of BART adopting the standards, or by July 1, 2022 if BART has not adopted TOD zoning standards for a station.
- 10) Requires BART to make a finding as to whether the local zoning ordinance is consistent with the TOD zoning standards.
- 11) Specifies that the local zoning remains in place unless the BART board determines that it is inconsistent with BART's TOD zoning standards. However, if the local zoning standards are inconsistent after July 1, 2022, the TOD zoning standards become the local zoning for affected parcels.
- 12) Allows a city or county to update its zoning to comply with TOD zoning standards until such time that a BART TOD developer enters into the development process and requires BART to take a city or county's progress in adopting zoning standards under consideration in negotiating an agreement with a prospective developer, if local zoning is in the CEQA review process.
- 13) Provides that if local zoning is within 10% of the standards specified in BART's 2017 TOD guidelines and specified floor area ratios on July 1, 2018, the local jurisdiction shall be exempt from BART TOD zoning standards.
- 14) Excludes stations without developable land from the TOD zoning standards.
- 15) Provides that nothing in this bill affects the application of density bonus.
- 16) Specifies that the adoption of TOD zoning standards is subject to CEQA review, and that BART is the lead agency for that review.

- 17) Provides that any subsequent rezoning to conform to the TOD zoning standards shall incorporate the environmental review document adopted by BART, and prohibits a local agency from preparing an environmental impact report or mitigated negative declaration for a rezoning or for an eligible TOD project unless the rezoning or TOD project creates a significant impact on the environment that was not previously analyzed, mitigated, or avoided.
- 18) Provides that TOD zoning standards are the controlling standards where there are inconsistencies with other local development regulations, and provides that TOD zoning standards in force as a result of this bill are the same as local zoning for all purposes.
- 19) Establishes certain parking requirements for auto dependent stations and imposes certain constraints on local parking requirements.
- 20) Allows an eligible TOD project to qualify for streamlined ministerial approval pursuant to existing law if it meets all of the following conditions:
 - a) The project's height is up to one story, or 15 feet, taller than the highest approved height for mixed use or residential use within a half mile of a BART station entrance;
 - b) The project has a floor area ratio equal to or less than 0.6 times the height in (a);
 - c) If greater than (a) or (b), local zoning standards.
- 21) Excludes from streamlining projects that have a specific, adverse impact that cannot be mitigated.
- 22) Allows a project eligible for streamlining to apply for a density bonus, as provided in existing law, and to retain streamlining even if it exceeds the height and floor area ratio specified in this bill.
- 23) Requires BART to ensure that locally adopted design guidelines for projects eligible for streamlining are incorporated into an agreement with the developer, to the extent that it does not affect the standards in this bill.
- 24) Authorizes a local jurisdiction to exercise full design review and conditional permitting for projects that do not qualify for streamlining.
- 25) Provides a vested right for two years to an eligible TOD project that has entered into an exclusive negotiating agreement.

- 26) Requires BART to take specified steps to avoid the loss of affordable housing units and prevent displacement of tenants, including:
- a) Require that any eligible TOD project that involves the demolition of specified housing affordable to moderate or lower income be subject to a policy that replaces those units within the TOD project and subjects the replacement units to a recorded affordability restriction.
 - b) Prohibit the demolition of any unit occupied by lower income tenants unless the district or the TOD developer has offered, in writing, the tenant a commensurate or better replacement affordable housing unit that is available for occupancy by the displaced tenant within a half-mile of the same station at rent that does not exceed the tenants previous rent.
 - c) Prohibit the occupation of new units by new tenants until displaced tenants are provided the opportunity to relocate to those units.
 - d) Provide relocation assistance consistent with existing law.
 - e) Develop a strategy to increase affordable housing and deliver housing for essential workers in and around TOD projects, in coordination with local jurisdictions.
- 27) Requires an eligible TOD project to restrict at least 20 percent of the units for occupancy at affordable rates by lower income households, or a higher percentage if required by a local ordinance. 30 percent of housing units must be affordable across all BART-owned land.
- 28) Requires a project to comply with BART labor standards and labor standards in existing law for streamlined projects.
- 29) Requires BART to report before July 1, 2027 on whether the provisions of the bill have increased housing development, including specified metrics.
- 30) Sunsets this bill's provisions, excluding the vested right, on January 1, 2029.
- 31) Includes findings and declarations to support the purposes of the bill and that state the unique nature of BART as a transit district with an elected board.

Background

BART TOD guidelines and zoning standards. In May 2017, BART released a publication on its "Transit-Oriented Development Guidelines," with the goal of beginning to implement BART's previously adopted TOD policy. Among others,

the purposes of the TOD Guidelines were to delineate what BART requires and encourages in TOD projects—such as building and street design, financial performance, partnerships and blending with the community—and to offer guidance to cities and developers in creating transit-supportive station area plans for the areas surrounding BART stations, TOD projects, and approvals within a half-mile of BART stations.

The TOD Guidelines state that BART-owned developable land, totaling 250 acres spread across 27 stations that are already built or under construction, offers a unique opportunity for TOD. The Guidelines assign each BART station a “place type”: regional centers, urban or city centers, and neighborhood or town centers. Regional centers are the central areas of San Francisco and Oakland; urban or city centers include Berkeley, other parts of Oakland and San Francisco, and other medium sized or centrally located Bay Area cities. Other cities including some in the North, East, and South Bay qualify as neighborhood or town centers.

Based on these place types, the guidelines specify zoning standards that BART identifies as conducive to TOD, including quantified standards for height, density, and parking, as follows:

	Regional Center	Urban or City Center	Neighborhood or Town Center
Parking maximum	1 space/unit; 2.5 spaces/1,000 sq. ft.	0.5 space/unit; 1.6 spaces/1,000 sq. ft.	0.375 space/unit; no office parking spaces
Height minimum	12 stories	7 stories	5 stories
Density	75 units/acre		

Seeking to encourage more transit-oriented development around BART stations, some local officials want to allow BART to modify local zoning requirements.

Comments

- 1) Purpose of the bill. According to the author, “to play its part in fulfilling state and regional goals, BART recently passed a progressive and ambitious TOD policy. BART committed itself to fully building out the land it owns around its stations by 2040 to produce over 20,000 new units of housing, of which 7,000 will be affordable, and 4,500,000 sq. ft. of office and commercial space, including child care and educational facilities. The success of BART’s TOD policy is essential to meeting the Bay Area’s housing needs, reducing the Bay

Area's greenhouse gas emissions and criteria pollutants, reducing crippling congestion on Bay Area roads, and providing much needed affordable housing to low-income residents with direct, reliable, and affordable transportation connections to jobs and services. Unfortunately, BART cannot fully deliver on some of its most promising TOD opportunities. Historically, TOD projects have taken too long --often more than a decade-- with jurisdictions demanding less housing and too much parking for transit adjacent development. These factors have increased project costs while reducing project benefits and affordability. As a result, BART has not proposed TOD on many of its opportunity sites. AB 2923 will help expedite the production of well designed, mixed-use development adjacent to transit. TOD projects will in turn increase transit ridership, reduce congestion and greenhouse gas outputs, and sustainably accommodate new growth."

- 2) *Land use questions.* The California Constitution specifically grants cities and counties the exclusive ability among local governments to exercise police powers, which form the basis of local regulation of land use. California has developed a complex system for planning based on the premise that cities and counties are the agencies with this authority, which includes long-range planning for future development and infrastructure needs through general plans, zoning ordinances and other specific actions that carry out the general plan, and health and safety and design review standards. AB 2923 upends this system by taking land use decisions out of the hands of cities and counties and giving it to another local government by telling cities and counties that they must adopt BART's standards. Granting land use authority to a local government that isn't a municipality sets a significant precedent. Siting housing near transit is undoubtedly an important issue, but so are other concerns that are affected by land use patterns, such as managing the state's water supplies or reducing greenhouse gas emissions. Other local agencies have significant roles to play in these issues: for example, water districts—which, like BART, have elected boards and are often regional governments—may be rightfully concerned with the pressures that new development places on water supplies. AB 2923 would grant a transit agency land use authority with the justification that dense housing near transit serves important state goals, but other local agencies may make a similar argument and request similar authority.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Unknown, potentially significant state-mandated local costs for BART to adopt TOD zoning standards. Staff notes, however, that the bill allows BART to use

its 2017 TOD Guidelines if it fails to adopt new standards by July 1, 2020. The Commission on State Mandates may determine that the bill does not impose a mandate on BART, since it functionally allows them to use existing guidelines in lieu of adopting new zoning standards. In addition, BART has general fare-setting authority. The Commission would ultimately determine whether any BART costs are reimbursable, to the extent a claim is filed. (General Fund)

- Unknown, likely significant state-mandated local costs for jurisdictions in the BART service area to adopt local zoning ordinances that conform to the district's TOD zoning standards. To the extent the Commission on State Mandates determines these costs are reimbursable, there could be General Fund impacts. Staff notes, however, that cities and counties have general authority to adjust planning and permitting fees as necessary to cover administrative costs associated with new planning mandates.

SUPPORT: (Verified 8/17/18)

Non-Profit Housing Association of Northern California (co-source)
State Building and Construction Trades Council (AFL-CIO) (co-source)

A. Philip Randolph Institute

350 Bay Area

Bay Area Council

Brightline Defense Project

California Apartment Association

California Asian Pacific Islander Chamber of Commerce

California League of Conservation Voters

California YIMBY

Center for Sustainable Neighborhoods

Circulate San Diego

City and County of San Francisco

Council of Infill Builders

Greenbelt Alliance

Habitat for Humanity

Local Government Commission

Metropolitan Transportation Commission

Mission Hiring Hall

Natural Resources Defense Council

Northern California Carpenters Regional Council

San Francisco Electrical Construction Industry

San Francisco Housing Action Coalition

SMART, SMW Local Union No. 104

Sprinkler Fitters and Apprentices
San Francisco Bay Area Planning and Urban Research Association
Silicon Valley Leadership Group
SV@home
TransForm
Up for Growth California
YIMBY Action
Young Community Developers

OPPOSITION: (Verified 8/23/18)

American Planning Association, California Chapter
Cities of Berkeley, Brentwood, Concord, Danville, Dublin, Fremont, Hayward,
Lafayette, Livermore, Martinez, Novato, Orinda, Palmdale, Pittsburg, Pleasant
Hill, Pleasanton, Riverside, San Ramon, and Walnut Creek
Contra Costa County Mayors' Conference
County of Alameda
Debora Allen, BART Director, District 1
John McPartland, BART Director, District 5
League of California Cities
Tom Blalock, BART Director, District 6

ASSEMBLY FLOOR: 42-32, 5/31/18

AYES: Arambula, Berman, Bloom, Bonta, Burke, Caballero, Carrillo, Cervantes,
Chau, Chiu, Cooley, Daly, Eggman, Friedman, Cristina Garcia, Eduardo Garcia,
Gipson, Gloria, Gonzalez Fletcher, Gray, Grayson, Holden, Jones-Sawyer,
Kalra, Kamlager-Dove, Limón, Low, McCarty, Medina, Mullin, Muratsuchi,
Nazarian, O'Donnell, Reyes, Rubio, Santiago, Mark Stone, Thurmond, Ting,
Weber, Wood, Rendon

NOES: Acosta, Aguiar-Curry, Travis Allen, Baker, Bigelow, Brough, Chávez,
Chen, Choi, Chu, Cunningham, Dahle, Flora, Fong, Frazier, Gallagher, Harper,
Irwin, Kiley, Lackey, Levine, Maienschein, Mathis, Mayes, Melendez,
Oberholte, Patterson, Quirk-Silva, Salas, Steinorth, Voepel, Waldron

NO VOTE RECORDED: Calderon, Cooper, Quirk, Rodriguez

Prepared by: Anton Favorini-Csorba / GOV. & F. / (916) 651-4119
8/23/18 10:35:20

**** END ****