



City Council

Don Tatzin, Mayor
Cameron Burks, Vice Mayor
Mike Anderson, Council Member
Mark Mitchell, Council Member
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March 26, 2018

Senator Scott Wiener
State of California
State Capitol Room 4066
Sacramento, CA 95814-4900

Re: SB 827

Dear Senator Wiener:

Given that the lack of adequate affordable housing is, to many people, among the most significant problems that California faces, we recognize the importance of your efforts to deliver solutions that will increase the supply and lower the cost of housing in a manner consistent with California's climate goals and transportation infrastructure. However, for the reasons explained below we strongly oppose SB 827.

In recent years, California state government has assumed greater power over local land use decisions. Examples of these actions include the Regional Housing Needs Allocation process, the Sustainable Communities Strategy, strong encouragement of clustered housing around existing downtowns and other centers, and a focus on infill rather than expansionary development, albeit with few mechanisms to help fund housing. Since our community incorporated in 1968, Lafayette's general plans have encouraged denser development in our downtown which is also where the BART station is located. As a result, we attracted investors and approved 470 units in the downtown during the past ten years, a substantial number for a community that has few vacant parcels and has around 9,700 total housing units. During much of this time the state was recovering from a recession. Using the limited tools available to us to encourage creation of affordable housing, 22 percent of these units will be affordable. However, because the limited amount of funds we have to create housing compared with the cost of meeting the needs, we can incentivize creation of affordable housing but cannot create it on a large scale.

Last year, several new bills including SB35 provide further incentives and requirements to create more housing, including affordable housing. We are working to refine our land use controls to comply with the new laws, make housing development more predictable for everyone, and retain guidelines that make our community unique.

SB 827, as proposed, upends that world. If SB 827 passes in its current form, we and most other affected communities would leave the world where residents and local governments determine development patterns in conformance with state requirements for allocating sufficient land for RHNA, encouraging infill development, facilitating construction of affordable housing and complying with other mandates. Instead we would enter a world where the Legislature through SB 827 transfers the power to determine local land development patterns around our city center and in surrounding neighborhoods into the hands of land speculators and developers. Lafayette residents, including those who are deeply committed to developing affordable housing, oppose this bill.

SB 827 effectively changes residential zoning in much of our community to allow greater heights and densities at the discretion of applicants. If implemented, the result will be mis-matched development when some parcels are developed to the density and other standards allowed by SB 827 rules while others conform to the rules in place at the time they were developed. Because the differences can be substantial, and because new developments under SB 827 can be as far as a mile apart, your bill encourages the effects of spot zoning by developers. Planning organizations often deride spot zoning nationwide and for good reason.¹

SB 827 facilitates greater density in residential zones which is like what existing state rules do, but under SB 827 parcels will be developed individually at a developer's discretion and in disparate locations rather than as part of a master plan. There are ramifications. A city's master plan sizes key elements of infrastructure to fit the population needs at buildout of the general plan and supportive zoning. Infrastructure includes schools, water and sewerage systems, local transportation systems including sidewalks, bike paths, and roads, public transit, and the other components of a sensibly developed area. However, under SB 827 the growth may be far higher than currently anticipated, and key elements of infrastructure within one-half mile of a transit station might not have the necessary capacity. The cost of adjusting the infrastructure could be enormous. The current per unit fees levied for infrastructure improvement may be woefully insufficient. However, local governments will need time to conduct the necessary nexus analyses and adjust the fees and that time is not granted by the bill. Therefore, the bill creates an unfunded mandate for school districts, utility districts, cities, counties, and other special districts.

Your bill also ignores the practical factors that are important to residents but may not be important to developers. These include not building in sensitive natural features including fire hazard zones, watersheds, coastal and riparian areas, liquefaction and subsidence zones and other areas particularly subject to ground movement during earthquakes or heavy rains, climate change inundation zones, and prime farmland that may be within the specified distances of a transit stop or high frequency transit line. In addition, there are human created areas including historic preservation areas that are not protected by SB 827.

A probably unintended side effect is that SB 827 may reduce the expansion of high quality transit service. The bill as drafted applies to communities where there is a major transit stop or a stop on a high-quality transit corridor. Nearby cities that are comparable except for these transit features will be exempt from SB 827's provisions. We think this will provide a disincentive for communities to advocate for additional transit services that will make SB 827 applicable.

¹ Mandelker, Daniel R., "Spot Zoning: New Ideas for an Old Problem", *The Urban Lawyer*, Vol. 48, No. 4, Fall 2016, page 742

As a result, the spread of transit services becomes less likely at a time when California needs more rather than less transit service. Furthermore, the burden to rebuild existing cities to accommodate housing demand will fall on those already served by transit that meets the guidelines of SB 827.

We believe the best action for us in the near future is to engage in building on the existing work of the state and regional agencies to create and fund housing. Senator Wiener, we request that you withdraw or table SB 827 as we doubt sufficient modifications can be drafted within this legislative year to make it acceptable to a majority of interested parties. To our representatives, Senator Glazer and Assembly Member Baker, we strongly request that you oppose the bill if it is not withdrawn. We are willing to enter into constructive discussions around reasonable things the state can do to incentivize housing.

Best regards,


Don Tatzin
Mayor

cc: Senator Steve Glazer
Assembly Member Catharine Baker
Director Debora Allen, BART
Samantha Caygill, League of California Cities