



City Council

Don Tatzin, Mayor  
Cameron Burks, Vice Mayor  
Mike Anderson, Council Member  
Mark Mitchell, Council Member  
Ivor Samson, Council Member

---

The Honorable David Chiu  
California State Assembly  
State Capitol Building, Room 4112  
Sacramento, CA 95814

***RE: AB 2923 (Chiu) San Francisco Bay Area Rapid Transit: TOD Notice of Opposition***

Dear Assembly Member Chiu:

The City of Lafayette regrets that it must oppose AB 2923, a bill that would essentially give the San Francisco Bay Area Rapid Transit (BART) land use authority over BART owned land within one-half mile of an existing or planned BART station.

It is very important to note that land use regulation is a Constitutionally-granted local government function of cities and counties. Authorizing a transit agency to regulate density, height and parking requirements transfers this essential local government function from their hands to a single special district.

Bestowing land use power onto a transit agency that is unaccountable to community members is contrary to existing law and may violate Article XI, section 11 of the State Constitution. In *re Werner* (1900) 129 Cal.567., the court struck down a state statute which granted a sanitary district the power "to make and enforce all necessary and proper regulations for suppressing disorderly and disreputable resorts and houses of ill fame within the district and to determine the qualifications of persons authorized to sell alcohol." The court held that the powers granted to the sanitary district violated Article XI, section 11 because the "police power" must be exercised locally by cities and counties only (as provided by the Constitution).

As written, this bill is vague and raises several questions regarding its applicability. Terms such as "station entrance" and "contiguous parcels" are undefined leading to speculation that BART's influence on land development could be far greater than what the drafters of the bill intended.

For example, does the land that BART owns and develops have to be contiguous to the transit station; or, can it be connected to the station by a series of contiguous parcels greater than 0.25 acres; or can it be multiple groups of parcels with each group of parcels being contiguous and at least one quarter acre in size? If the answer is either of the latter two options, BART

could, in essence, engage in land speculation, purchasing properties and imposing on them development standards that are in conflict with the local general plan. These properties could

then be leased to the highest bidder with the resulting income funding future BART operations. Is this the intended purpose of the bill?

The City of Lafayette is committed to collaboratively working with you and others on finding ways to spur much needed housing, including affordable housing, and we will continue to closely review this matter.

Unfortunately, AB 2923 as presently drafted is not a bill that the City of Lafayette can support. If you have any questions, please do not hesitate to contact me at 510-284-1968.

Sincerely



Don Tatzin  
Mayor, City of Lafayette

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