



**EXPEDITED CITY COUNCIL ACTION REQUEST**

<b>Department(s):</b> Housing	<b>Date:</b> 8/30/17	<b>Coordination:</b> City Attorney's Office City Manager's Office	<b>Dept. Approval:</b> /s/ Jacky Morales-Ferrand
			<b>CMO Approval:</b> <i>D. D. S. L.</i>

**SUBJECT: AB 915 (Ting): Planning and Zoning: Density Bonus: Affordable Housing Ordinances: City and County Of San Francisco**

**RECOMMENDED POSITION:** Oppose

**RECOMMENDED ACTION:**

1. Pursuant to the City's streamlined bill process for responding quickly to legislative proposals, re-affirm an oppose position on AB 915 (Ting).
2. Recommend that this be placed on the September 12, 2017 City Council meeting so that the City's legislative representative can continue to advocate the City's oppose position on AB 915 (Ting).

**BILL SYNOPSIS:**

AB 915 authorizes the City and County of San Francisco, if it has adopted an inclusionary ordinance, to apply that ordinance to the total number of housing units in the development, including any additional housing units granted pursuant to density bonus law.

However, the bill limits the City and County of San Francisco's ability to apply its inclusionary ordinance immediately, as it first requires feasibility analysis to be done by the California Department of Housing and Community Development (HCD). Under the bill, before the City and County of San Francisco could apply its ordinance as described above, the HCD analysis must affirmatively declare that the required minimum percentage of affordability is broadly feasible for density bonus projects. This change would apply to projects that submit applications after January 1, 2018. The bill requires HCD to make its determination by June 30, 2018.

The bill specifies that HCD's feasibility assessment shall include, but not be limited to, confirmation that applying the inclusionary requirement will not reduce the amount of *total* housing produced pursuant to the density bonus, and will not reduce the amount of *affordable* housing produced pursuant to the density bonus.

Under the bill, any affirmative declaration by HCD department shall expire on June 30 of the following calendar year, at which point it may be reauthorized by HCD for one year. If not reauthorized, then HCD must conduct a new feasibility assessment on the project and San Francisco would not be able to apply its inclusionary ordinance until HCD completes its assessment and makes the required findings.

**IMPACTS TO CITY OF SAN JOSE:**

This bill is limited in its applicability to the City and County of San Francisco; therefore, on its face, it does not apply to San José. However, the bill's passage would create a precedent on the need for HCD's analysis to implement inclusionary housing ordinances. This could impede San José's ability to implement its Inclusionary Housing Ordinance, which was upheld by the courts in 2015-16.

As the courts have upheld, inclusionary housing programs are justified as a reasonable exercise of the City's police powers. Like similar ordinances in many other cities, San José's Inclusionary Housing Ordinance includes ability mechanism for the City Council to waive requirements to the extent that a developer documents that the Ordinance's implementation would constitute a taking or partial taking of its property interests. The City's determination of project infeasibility would be part of those findings. There is no need for HCD to take part in the determination of feasibility, which varies according to each development.

Designating HCD as the body that determines feasibility for any local inclusionary housing ordinance would create an undesirable precedent and may be the first step in a state statutory framework that puts inclusionary housing ordinances and police power at risk for cities and counties statewide.

State density bonus law currently requires that affordable units created pursuant to a local inclusionary or similar ordinance also be counted for purposes of meeting density bonus requirements for affordable housing. By applying the inclusionary requirement on additional units granted by the density bonus, this bill could result in a small increase to the affordable units being created in San Francisco.

However, the risks of chipping away at local police power to implement inclusionary and other affordable housing programs is much greater than the benefit of creating a small number of additional affordable housing units in San Francisco. Staff recommends that the City oppose this bill because of the requirement for a feasibility analysis or other review by HCD.

**POLICY ALIGNMENT:**

This bill aligns with the Council-approved *2017 Legislative Guiding Principles and Priorities* to "Create New Financing Tools for Local Government to ...Build Affordable Housing." This bill is consistent with the City's priority to "protect local control."

**SUPPORTERS/OPPONENTS:**

**This bill is supported by:** San Francisco Mayor Ed Lee and several affordable housing advocacy organizations in the County of San Francisco.

**This bill is opposed by:** California Apartment Association, California Association of Realtors, California Building Industry Association, California Chamber of Commerce and several San Francisco community-based organizations.

**STATUS OF BILL:**

This bill passed out of the Assembly and as of 8/28/17, is before the Senate Appropriations committee on its suspense file.

**FOR QUESTIONS CONTACT:** Jacky Morales-Ferrand, Housing Director (408) 535-3851