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Maneesha Birdee
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More Housing Near Public Transit: Relocating the Bay Area's Poor.

Introduction: A State of Crisis

The Bay Area is in a housing crisis.¹ This crisis exists both physically and financially.² Physically, the Bay Area appears to have reached its threshold capacity—at least in its current zoning.³ Financially, many Bay Area residents can no longer afford their homes or apartments.⁴ According to the Bay Area Council Economic Institute, Bay Area rent now averages more than \$2,500 per month, while the median single-family home costs \$841,500.⁵

Many reports trace this crisis to technology companies establishing themselves in San Francisco and the Silicon Valley areas.⁶ Technology workers monopolize land in these areas because they can outbid current residents, causing a ripple effect in which people without matching high salaries move further and further out.⁷

The people most affected by this crisis do not work for San Francisco's corporate businesses or technology companies.⁸ For example, non-profit workers, bank tellers, retail sales

¹ Bay Area Economic Council Institute, *Solving the Housing Affordability Crisis: How Policies Change the Number of San Francisco Households Burdened by housing Costs* (2016). Available at: http://www.bayareaeconomy.org/files/pdf/BACEI_Housing_10_2016.pdf

² *Id.*

³ *Id.* See also: KTVU 2 News, *Leaving the Bay Area* (2008). San Jose Mayor Sam Liccardo says Bay Area residents need to abandon dreams of “a big house with a big yard with a nice picket fence” since “we simply don’t have the land for that anymore.” Available at: <https://www.youtube.com/watch?v=jBIRSOVbwUA&t=8s>

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Domingo, Janice Sobrepena. *The Pioneer, The Ripple Effect of Gentrification* (2017). Available at: <http://thepioneeronline.com/34491/opinions/the-ripple-effect-of-gentrification/>

⁸ Bay Area Economic Council Institute, *supra* note 1.

associates and teachers are all integral members of a functioning community.⁹ There is ample need for these professions in the cities, yet their salary does not pay at the rate demanded by Bay Area real estate.¹⁰ These blue-collar and government workers earn salaries that could sustain themselves and their families in other areas of the country or state, but because of housing prices in the Bay Area, these workers are low-income.¹¹ According to Housing and Urban Development statistics, a family of four in San Francisco, Marin and San Mateo, is considered low-income while earning \$117,400.¹² In Santa Clara, the figure is \$94,450.¹³ In Contra Costa, the figure is \$89,600.¹⁴ Bay Area residents are forced to increasingly spend a higher percentage of their income on housing.¹⁵ In 2000, twenty percent of Bay Area residents spent more than thirty percent of their income on rent. In 2014, the figure increased to forty-nine percent of renters.¹⁶

These percentages are unsustainable for people of lower-income. Low-income families can face displacement in two ways: (1) if they are priced out of the Bay Area, or (2) if they could never price in (known as exclusionary displacement).¹⁷ Low-income residents leave urban hubs to migrate outward, choosing suburbs such as Antioch and Pittsburg, or even further suburbs such as Modesto and Stockton, leading to what the Federal Reserve Bank of San Francisco deemed the “Suburbanization of Poverty.”¹⁸

⁹ Association of Bay Area Governments, *Affordable Housing in the Bay Area* (2014). *Available at:* <https://abag.ca.gov/files/AffordableHousing101.pdf>

¹⁰ *Id.*

¹¹ *Id.*

¹² HUD Data Sets (2018). *Available at:* https://www.huduser.gov/portal/datasets/il/il2018/select_Geography.odnn

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Bay Area Economic Council Institute, *supra* note 1.

¹⁶ *Id.*

¹⁷ Zuk, M., & Chapple, K (2015). *Urban Displacement Project*. *Available at:* <http://www.urbandisplacement.org/map/sf>

¹⁸ Sourourian, Matthew. *Community Development Research Brief: Suburbanization of Poverty in the Bay Area* (2012). *Available at:* <https://www.frbsf.org/community-development/files/Suburbanization-of-Poverty-in-the-Bay-Area1.pdf>

However, many eastward suburbs, while able to offer cheaper housing, offer much narrower job availability.¹⁹ As Senator Galgiani explained, her district of San Joaquin County and portions of Sacramento County and Stanislaus County have an abundance of housing, but not enough jobs close by.²⁰ Transportation to urban centers is thus suddenly crucial, and yet extremely underdeveloped in east-suburbs.²¹

This discrepancy, coupled with an environmental push set in place a decade ago to reduce car-based greenhouse gas emissions, propelled a housing and public transportation bill.²² Senator Scott Weiner, along with Senator Nancy Skinner and Assembly Member Phil Ting, created Senate Bill 827 (“Bill”). The Bill proposes building denser housing near public transportation, thereby allowing more people to live close to their jobs.²³ The Bill was introduced in January 2018 and sparked feverous debate over California housing. It was amended two times—once in March 2018 and once in April 2018.²⁴ Two weeks after its April amendment, in a lively senate hearing, the Bill was struck down.²⁵ It is currently set for reconsideration on April 25, 2018.²⁶ While the Bill died in its first hearing, and may die again during reconsideration, it has already succeeded in generating discussion and putting forth serious proposals for how to solve the housing crisis.²⁷ This paper will explore how the Bill used existing transit to dictate development requirements and what provisions of the Bill protect low-income people, specifically Ellis Act

¹⁹ U.C. Berkeley Building Resilient Regions: Institute of Governmental Studies, *The Suburbanization of Poverty in the San Francisco Bay Area* (2012). Available at: <http://brr.berkeley.edu/2012/03/the-suburbanization-of-poverty-in-the-san-francisco-bay-area/>.

²⁰ California Senate Hearing on Senate Bill 827. Senator Cathleen Galgiani discussing the job-housing imbalance in San Joaquin, Sacramento and Stanislaus Counties. Available at: <https://www.youtube.com/watch?v=0ReEeEEz-wA>

²¹ U.C. Berkeley (2012). Supra, note 19.

²² See effects of Senate Bill 375: S. 375, 110 Cong. (2008).

²³ S.B. 827 C.A. State Senate. (2018).

²⁴ *Id.*

²⁵ See Senate Transportation Housing Committee, 2017-2018 Bill Hearings. Available at: http://stran.senate.ca.gov/sites/stran.senate.ca.gov/files/april_17_votes_packet.pdf

²⁶ S.B. 375 C.A. State Senate. (2008). See Legislative Information History.

²⁷ Hendrix, Michael. California Housing Revolution?: A pro-market proposal from a liberal state senator offers hope for solving the state’s chronic shortage and high prices (2018). Available at: <https://www.city-journal.org/html/california-housing-revolution-15731.html>

evictions, inclusionary housing requirements and relocation costs. This paper will also suggest what a more successful bill could look like, focusing on a larger percentage of a developer's bonus going to the public, a larger apportionment of low-income and multi-family homes, and making better use of suburban transit parking lots.

The Bill's Approach

The Bill required that city and county governments approve and grant bonuses for housing developers who develop within a half mile of public transit.²⁸ The Bill defines public transit as all existing rail transit stations (such as Bay Area Rapid Transit), ferry terminals that are also serviced by bus or a rail transit service, and high-quality bus corridors that run at least every fifteen minutes during peak hours (6 a.m. to 10 a.m.; 3 p.m. to 7 p.m.) on weekdays, and at least every thirty minutes all day on weekends (8 a.m. to 10 p.m.).²⁹ Figure 1 uses colored dots to show the affected areas in the Bay Area.

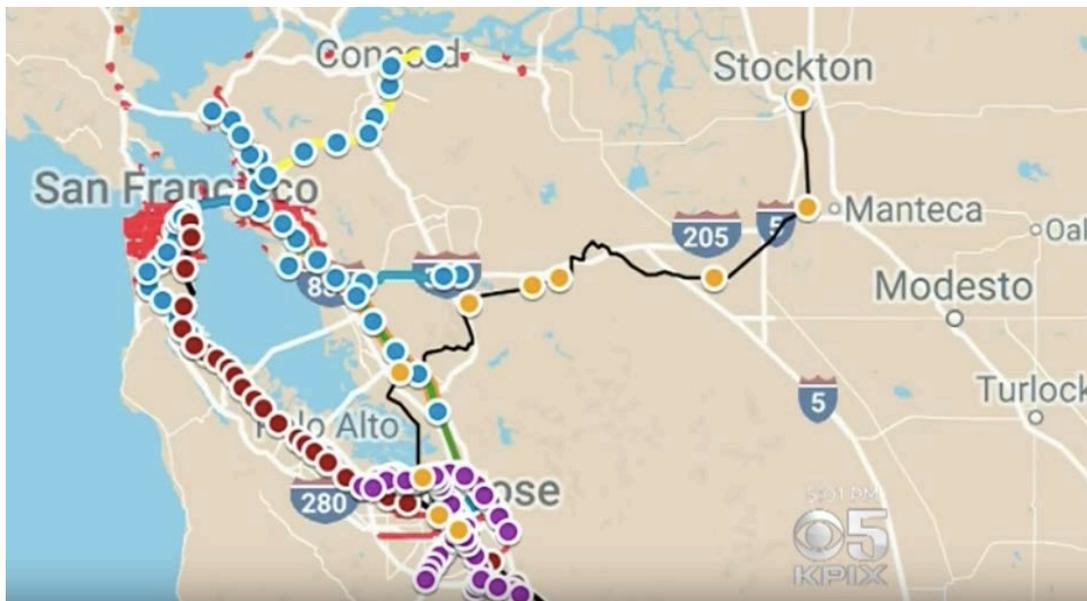


Figure 1³⁰

²⁸ S.B. 827 C.A. State Senate. (2018).

²⁹ *Id.* at § 65918.5 (d)(2) and § 65918.5 (d)(3).

³⁰ CBS SF KPIX News.

Under the Bill, local governments could no longer restrict these areas for single-family homes only.³¹ Developers would be allowed to build apartment buildings and multi-family homes such as town homes or condominiums.³² The buildings would likely be multi-level, since local governments could not impose height restrictions less than fifty-five feet within a quarter mile of a transit stop, or forty-five feet within a half mile of a transit stop.³³ As incentive, developers would receive a bonus for building, but must allocate a portion to the building's residents.³⁴ Furthermore, the Bill prohibited demolishing any building that violated the Ellis Act in the last five years.³⁵ The Ellis Act allows a landlord to legally evict rent-controlled tenants.³⁶

Developers must also offer occupants living in the affected zones a right to remain guarantee.³⁷ This means that if the occupants can afford the new rate, then they can choose to live in the new units.³⁸ The Bill requires that developers match any inclusionary housing requirements that the city or county already has in place.³⁹ If the city or county does not have any, the developer must price at least some of their units at "affordable" rates.⁴⁰ To do this, the Bill provides the developer with options. For a housing complex with ten to twenty-five units, the developer could choose to provide five percent of its units to very low-income households, ten percent of its units to low-income households, or twenty-five percent of its units to moderate-income households.⁴¹ Thus, for a twenty-five unit complex, one and a quarter units could be priced at very low-income, two and a half units could be at low-income, or six and a quarter units

³¹ S.B. 827

³² *Id.*

³³ *Id.* at § 65918.6.

³⁴ *Id.*

³⁵ *Id.*

³⁶ San Francisco Tenants Union. Ellis Act Evictions. Available at: <https://www.sftu.org/ellis/>

³⁷ *Id.* at § 65918.7.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at § 65918.6.

could be at moderate-income. For a housing complex with twenty-six to fifty units, the developer could choose to provide seven percent of its units to very low-income households, thirteen percent of its units to low-income households, or thirty percent of its units to moderate-income households.⁴² On a fifty-unit complex, this translates to three and a half units potentially being priced at very low-income, six and a half could be at low-income, or fifteen could be priced at moderate-income. This is not enough.

The developer must also help pay for “relocation benefits and assistance.”⁴³ If the occupant does not move into one of the newly developed units, then the developer must assist the occupant in finding new housing and completing his or her application.⁴⁴ This developer must also pay the occupant the cost of moving.⁴⁵ This cost includes the cost of transportation for up to fifty miles away (unless a further distance is “justified”), the cost of packing and unpacking, the cost of hiring movers or moving oneself, a year’s worth of storage for the occupant’s personal belongings, and insurance on those belongings.⁴⁶ The developer must also pay for the difference in price between the occupant’s unit and their replacement unit for up to three and a half years, provided the amount does not exceed the cost of what the occupant would have spent renting his original place for three and a half years.⁴⁷ The developer can pay this cost in one lump sum or in intervals acceptable to the occupant.⁴⁸ The developer must pay in advance when late payment would result in financial hardship.⁴⁹ Financial hardship applies when a low or moderate-income earner experiences financial limitations.⁵⁰

⁴² *Id.*

⁴³ *Id.* at § 65918.7

⁴⁴ *Id.* at § 65918.8

⁴⁵ *Id.* at §65918.9

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

Thus, the Bill essentially plans for displacement and attempts to mitigate the impact for the occupants. While this is a good start, it is not enough.

A Better Bill

The Bill provides a good foundation. It presents a good definition for what constitutes public transit and a good radius of how far out to build. By specifying the frequency of a bus stop during peak hours, the Bill helps ensure that the transit is comprehensive and developed enough to making living without a car possible—a reality low income people face. The Bill also cushions the displacement of occupants and homeowners directly affected by the redevelopment. Constitutionally, the State may not seize property without due compensation.⁵¹ Here, the occupant or homeowner is given the choice to remain in the area. If the occupant or homeowner moves, he or she is compensated for the associated costs. Finally, the Ellis Act provision provides good protection for the Bay Area's few rent controlled buildings. If a rent-controlled building faced violations in the past five years, the Bill recuses itself, ensuring the tenants will face no further upheaval and allows the rent-controlled building to stay. However, the Bill does not go far enough with rent-control to stymie the suburbanization of poverty. A better bill will require developers to use their transit bonus in ways that benefit the public rather than just the homeowner or occupant, including static requirements for more low-income housing, advocate for more multi-family homes, and make better use of public transit parking lots.

The Bill incentivizes developers with transit-rich bonuses. The developers use these bonuses to help ease displacement of the homeowners whose property they would be redeveloping. While easing displacement is important, a better bill could lessen displacement in the first place by using the bonus to provide more low-income housing.

⁵¹ U.S. Const. amend. XIV.

The Bill did not allow local governments to choose how much inclusionary housing would be provided. On one hand, this is a smart move. Local government is often sensitive to its residents who can have strong feelings of NIMBY-ISM (Not In My Back Yard). Associating low-income workers with crime and other social ills, NIMBY residents will pressure their governments to advocate for little to no inclusionary housing. On the other hand, one of the reasons the Bill did not pass is because some senators felt the Bill regulated the percentages of inclusionary housing too rigidly. Because this is a senate bill, senators must be sensitive of the Bill's implications to the *entire* state—not just the Bay Area that Senator Weiner, Senator Skinner and Assembly Member Ting represent.⁵² At the Bill's hearing, senators on the panel argued that this law would be obsolete and imbalance California's rural northern and eastern areas.⁵³ A better bill might take into consideration city population, or even studies on urban sprawl / gentrification / displacement. A better bill might require certain census counts of unemployment, job type, or commute time. For populous cities that provide jobs, affordable housing would kick in at strong percentages. Furthermore, rather than allowing a developer to choose one very low-income unit out of twenty-five, or three very low-income units out of fifty, a better bill will mandate higher percentages of affordable housing itself. Instead of the developer choosing between units priced for very-low income, low-income, or moderate-income earners, a better bill will mandate all three.

A better bill will also ensure that some of these units are condominiums. Apartments attract young, single people, but condominiums are a good compromise between dense housing and family housing. The Bill allowed developers to choose whether to build apartments or condominiums, but a better bill will require a certain number of condominiums. This will appeal

⁵² SB 827. *See* Legislative History. "Lead Authors: Weiner (S), Principal Coauthors: Skinner (S), Ting (A)."

⁵³ Senate Transportation Housing Committee, *supra* note 25.

more to low-income residents with families to prevent them from moving further east; a phenomenon that happened to Felicia Duncan.

Felicia is a single mother who moved from West Oakland to Antioch for a cheaper and bigger home, only to realize Antioch did not have adequate private or public schools for her children, and that the commute to Oakland for work was unbearable.⁵⁴ Providing rent-controlled condominiums would at least provide a housing option for Felicia and her family. As Felicia discovered, living further out may provide cheaper living, but the living is more isolated too. Margarete Weir, a member from a nonprofit organization that researches national public policy explained, “most of the non-profit social service agencies that play a leading role in providing services to low-income residents are located in the cities, not suburbs. Therefore, suburbs face a new challenge with few established organizational resources.”⁵⁵ Further from urban centers, public transit becomes impracticable.⁵⁶ For example, the North-East BART line stops at Pittsburgh (or Antioch with the BART extension). Past this, in areas such as Tracy, Roseville, Elk Grove, families would need to purchase at least one car to get anywhere, or two if multiple family members work. Public transit should be available for members of the public who rely upon it. By not providing inclusionary housing that allows low-income populations to utilize public transit, the legislature is essentially privatizing transit. When low-income residents are pushed to the outskirts, they are at risk of being stranded.

Finally, a better bill would include parking structures near public transit. For example, the Lafayette BART station runs out of parking by 7:30 a.m. each weekday morning despite four

⁵⁴ Richman, Josh. Oakland Tribune. *Census: Blacks Leaving Urban Core for East Bay Suburbs* (2011). Available at: <http://www.csueastbay.edu/news/2011/03/census-blacks-leaving-urban-core-for-east-bay-suburbs.html>

⁵⁵ U.C. Berkeley Building Resilient Regions: Institute of Governmental Studies, *The safety net is thin in suburbs despite growing poverty* (2011). Available at: <http://br.berkeley.edu/2011/07/the-safety-net-is-thin-in-suburbs-despite-growing-poverty/>

⁵⁶ U.C. Berkeley Building Resilient Regions, *supra* note 25.

large surrounding parking lots. The waitlist for a permit that would allow specially designated permit parking (at \$105 per month) currently has a waitlist close to three-thousand.⁵⁷ In the evening, after the weekday commute hours pass, and during weekends, these parking lots sit mostly vacant. A better bill would require parking structures. Parking structures provide more parking, allowing the large swaths of land that sit more vacant than not to be used for affordable housing.

Conclusion

Public transit should serve the whole public. When low-income workers can no longer afford Bay Area real estate, public transit becomes more vital than ever for their mobility and success. Pushing low-income earners outwards, to areas without access to public transit not only leaves a deficit for blue-collar and government jobs in the cities, but also widens the wealth gap and risks leaving low-income workers with less resources than before.

Senate Bill 827 was a laudable start at addressing the Bay Area's housing crisis. The legislature must continue to address it. Even as senator Jim Beall voted against the Bill at its hearing, he applauded Senator Weiner for his efforts so far and emphasized that this issue is far from over for California residents and the legislature. He stated with conviction, "We need a bill. And we need it in the coming year."⁵⁸

⁵⁷ BART form for monthly parking permit: Select-a-Spot, A Division of Pacific Park Management. Available at: https://www.select-a-spot.com/bart/users/login/?next=/bart/waiting_lists/update_phone/%3Fcsrfmiddlewaretoken%3D82YyXNPpiQ7XGkLZMlg8eUKPCpeCOoI0%26type_id%3D41. Monthly rate available at: <https://www.select-a-spot.com/bart/reservations/facilities/?type=monthly>

⁵⁸ California Senate Hearing on Senate Bill 827. Senator Jim Beall comments during voting. *Supra* note 20.