

ASSEMBLY BILL

No. 2923

**Introduced by Assembly Members Chiu and Grayson
(Coauthor: Assembly Member Mullin)**

February 16, 2018

An act to add Sections 28765.5 and 28765.7 to the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2923, as introduced, Chiu. San Francisco Bay Area Rapid Transit District: transit-oriented development.

(1) Existing law establishes the San Francisco Bay Area Rapid Transit District (BART) with various powers and duties and establishes a board of directors as the legislative body of the district. Existing law requires the board to determine all questions of district policy and what transit facilities should be acquired or constructed, and authorizes the board to establish zones within the district to undertake the acquisition or construction of any transit facilities.

This bill would require the board to adopt new transit-oriented development (TOD) guidelines by a majority vote at a duly noticed public meeting that establish minimum local zoning requirements for BART-owned land that is located on contiguous parcels larger than 0.25 acres, within $\frac{1}{2}$ mile of an existing or planned BART station entrance, in areas having representation on the BART board of directors. The bill would require that the approval or amendment of TOD guidelines comply with specified requirements and would require local jurisdictions to adopt an ordinance that approves the application of TOD guidelines within 2 years of the date that the TOD guidelines are approved by the board. The bill would provide that the board's approval

of TOD guidelines is subject to the California Environmental Quality Act (CEQA) and would designate the board as the lead agency for CEQA review.

The bill would require the board, where local zoning remains inconsistent with the TOD guidelines after this 2-year period, to approve local zoning standards for any BART-owned land within ½ mile of any existing or planned BART station entrance within the BART district in areas represented on the board. The bill would require the board to adopt a permit streamlining process for specified TOD project applicants and would provide that a TOD project shall include a specified 20% affordable housing requirement and comply with specified labor requirements.

By increasing the duties of local public officials, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 28765.5 is added to the Public Utilities
- 2 Code, to read:
- 3 28765.5. (a) Notwithstanding any other law, the San Francisco
- 4 Bay Area Rapid Transit District (BART) board of directors shall
- 5 adopt transit-oriented development (TOD) zoning standards by a
- 6 majority vote at a duly noticed public meeting that establish
- 7 minimum local zoning requirements for BART-owned land that
- 8 is located on contiguous parcels larger than 0.25 acres, within
- 9 one-half mile of an existing or planned BART station entrance, in
- 10 areas having representation on the BART board of directors.
- 11 (1) Zoning standards published in the current BART Guidelines
- 12 shall serve as the baseline for BART TOD zoning. Approved TOD
- 13 zoning standards shall establish the lowest permissible height
- 14 limits, lowest permissible density limits, and the highest

1 permissible parking maximums, as established by Table 1 and
2 Figure 1 of BART TOD Guidelines (2017).

3 (2) In approving TOD zoning standards, the board shall establish
4 and include the lowest permissible floor-area-ratio limits for each
5 TOD place type.

6 (3) TOD zoning standards shall be approved by the board by
7 April 1, 2019, and may be amended by the board thereafter
8 pursuant to this section. If the board fails to approve new guidelines
9 by April 1, 2019, the existing Table 1 of BART TOD Guidelines
10 (2017) shall serve as the minimum local zoning requirements for
11 local jurisdictions, with the Transit Oriented Place Types indicated
12 in Figure 1 of the BART TOD Guidelines (2017).

13 (b) The approval of, and amendments to, the TOD zoning
14 standards shall comply with all of the following:

15 (1) The board shall hold a public hearing to receive public
16 comment on proposed standards or proposed changes to standards.
17 The district shall conduct direct outreach to communities of
18 concern.

19 (2) Not less than 30 days before a public hearing of the board
20 to consider the standards, the district shall provide public notice
21 and make the draft guidelines available to the public.

22 (3) The board shall approve or reject any proposed standards at
23 a publicly noticed meeting of the board not less than 30 days
24 following the original public hearing.

25 (c) Before or at the same time as approving TOD zoning
26 standards, the board shall approve travel demand management
27 requirements for TOD projects on district-owned real property.

28 (d) (1) Where local zoning is inconsistent with the TOD zoning
29 standards, the local jurisdiction shall adopt an ordinance that
30 approves the application of the TOD zoning standards within two
31 years of the date that the TOD zoning standards were approved
32 by the board.

33 (2) The local zoning ordinance shall conform to the TOD zoning
34 standards without the application of any bonuses or waivers
35 allowable under any state or local density bonus provisions.

36 (e) The board shall make a finding as to whether the local zoning
37 ordinance is consistent with the TOD zoning standards. Local
38 zoning shall remain in place unless the board determines that it is
39 inconsistent with TOD zoning standards. If, according to the
40 board's finding, the local zoning ordinance remains inconsistent

1 with the TOD guidelines after the two-year period specified in
2 paragraph (1) of subdivision (d), the TOD zoning standards shall
3 become the local zoning standards for any BART-owned land
4 within one-half mile of any existing or planned BART station
5 entrance in areas represented on the board. A jurisdiction may
6 update zoning to comply with TOD zoning standards until such
7 time that a BART TOD developer enters into the development
8 process.

9 (f) (1) The board's approval of TOD zoning standards and local
10 zoning standards shall be subject to the California Environmental
11 Quality Act (Division 13 (commencing with Section 21000) of
12 the Public Resources Code). The board shall serve as the lead
13 agency for CEQA review.

14 (2) Any CEQA review of rezoning to conform with TOD zoning
15 standards, and of TOD projects proposed on BART-owned land
16 shall incorporate the CEQA review for approval of TOD zoning
17 standards to the greatest degree possible. An agency may not
18 prepare CEQA documents on rezoning to implement TOD zoning
19 standards subsequent to BART's CEQA review of the approval
20 of TOD zoning standards absent a finding of substantial evidence
21 that the rezoning creates a significant negative impact, based on
22 standards in effect at the time that the CEQA review on the
23 approval of the TOD zoning standards was performed.

24 (g) A TOD development proponent may submit an application
25 for a development that is subject to the streamlined, ministerial
26 approval process not subject to a conditional use permit if the
27 development satisfies the objective planning standards specified
28 in subdivision (a) of Section 65913.4 of the Government Code that
29 are consistent with the BART TOD zoning standards regardless
30 of a local jurisdiction's status regarding its regional housing needs
31 allocation.

32 SEC. 2. Section 28765.7 is added to the Public Utilities Code,
33 to read:

34 28765.7. (a) Notwithstanding Section 65913.4 of the
35 Government Code, in the event that TOD zoning standards,
36 objective planning standards, general plan, or design review
37 standards are mutually inconsistent, the TOD zoning standards
38 shall be the controlling standards. To the extent that the zoning
39 standards do not resolve inconsistencies, the general plan shall be
40 the controlling standard.

1 (b) The board may waive any requirement that it finds to be
2 inconsistent with Section 65913.4 of the Government Code.

3 (c) The board shall do all of the following to avoid the loss of
4 affordable housing units and to prevent the direct displacement of
5 tenants:

6 (1) Require that parcels that currently have residential uses, or
7 within the past five years have had residential uses that have been
8 vacated or demolished, that are or were subject to a recorded
9 covenant, ordinance, or law that restricts rents to levels affordable
10 to persons and families of low or very low income, or subject to
11 any other form of rent or price control through a public entity's
12 valid exercise of its police power, shall be subject to a policy that
13 requires the replacement of all those affordable housing units to
14 the same or lower income level as a condition of any development
15 on the parcel within the TOD project area.

16 (2) Require that tenants directly displaced from affordable
17 housing units by a TOD project be prioritized for placement in
18 affordable housing units within new developments located on
19 BART-owned land.

20 (3) Develop a plan to do both of the following:

21 (A) Increase affordable housing options for very low and
22 low-income residents within and around a TOD project area,
23 particularly in communities of concern, as defined in MTC's
24 regional transportation plan, where there is potential for residential
25 displacement due to changing market and development conditions.

26 (B) Deliver housing for essential workers within and around
27 TOD projects.

28 (d) A TOD project shall do both of the following:

29 (1) Include at least a 20-percent minimum of the affordable
30 residential housing units for very low, low-, and moderate-income
31 households and subject to a recorded affordability restriction for
32 at least 55 years with a priority on residential units for very low,
33 low-, and moderate-income households.

34 (2) Comply with the labor requirements of Section 65913.4 of
35 the Government Code and any other applicable BART labor
36 policies.

37 (e) The board may identify specific TOD projects that are in
38 the approval process with a local jurisdiction on or before
39 imposition of the TOD zoning standards adopted pursuant to
40 subdivision (a) of Section 28765.5 that are proceeding with local

1 zoning approval and entitlement pursuant to existing local zoning
2 authority.

3 SEC. 3. If the Commission on State Mandates determines that
4 this act contains costs mandated by the state, reimbursement to
5 local agencies and school districts for those costs shall be made
6 pursuant to Part 7 (commencing with Section 17500) of Division
7 4 of Title 2 of the Government Code.