



Nevada Home Builders Association

April 25, 2019

The Honorable Edgar Flores
Chair, Assembly Government Affairs
Nevada Legislature
Room 3143, Legislative Building
Carson City, NV 89701

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Nat Hodgson, SNHBA
Don Tatro., BANN

Dear Chairman Flores,

The Nevada Home Builders Association (NVHBA) is the statewide advocacy group for the homebuilding industry. The NVHBA is governed by the membership of the Southern Nevada Home Builders Association and the Builders Association of Northern Nevada. The NVHBA is in opposition to Senate Bill 398 primarily out of the uncertainty over the powers granted to a local government pursuant to the bill.

There is no question that affordable housing is a serious problem in Nevada. That is why the NVHBA has supported legislation that decreases the cost to build homes, such as the fee flexibility provisions of Senate Bill 103 and has opposed legislation that will increase the cost to build homes, such as Assembly Bill 421. Decreasing the cost to build homes translates to lower costs for homebuyers.

At the hearing on this bill in the Senate Government Affairs Committee on March 20, 2019, there were suggestions that one of the goals of the bill was to allow a local government to implement inclusionary zoning programs. Mandatory inclusionary zoning programs are typically structured to require developers to subsidize a certain percentage of affordable units within market-rate developments and require those units to be sold at under market rate prices, regardless of the cost to develop those units. A recent study by the National Association of Home Builders found that mandatory inclusionary zoning raises market prices for non-subsidized homes, and results in fewer affordable homes being built. See *Inclusionary Zoning Primer*, National Association of Home Builders, September 2015.

The NVHBA supports programs that incentivize the construction of affordable housing but opposes any policies that mandate programs like inclusionary zoning. Unfortunately, Senate Bill 398 does not appear to distinguish between incentives and mandates, and there's no guarantee that any policies implemented from the passage of this legislation will actually aid in bringing affordable units to the market.





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While SB 398 does not expressly mandate inclusionary zoning, the bill includes provisions allowing a local government to accept a payment in lieu of any obligation on a developer for an affordable housing program. This language suggests that the bill is designed to impose mandatory obligations on a developer which can be resolved through a direct payment to the local government. Such obligations are an indirect way of imposing a fee or tax on a developer, which cannot be done by a local government without an express grant of statutory authority.¹ See NRS 244.143; NRS 268.0035.

NVHBA's opposition to Senate Bill 398 can be resolved if the bill makes it clear that any programs considered by a local government to tackle affordable housing, such as inclusionary zoning programs, should be voluntary, incentive-based programs. The Legislature and local governments should consider programs to reduce existing fees and costs on construction, look for ways to increase the supply of land for future projects, streamline the entitlement process, and provide density bonuses to encourage urban infill and transit-oriented development.

Thank you for the opportunity to make these comments in opposition to Senate Bill 398.

Don Tatro,
CEO, BANN

Nat Hodgson,
CEO, SNHBA

¹ Although beyond the scope of this letter, there may also be a legal question as to whether Senate Bill 398 as currently drafted would allow inclusionary zoning programs to be implemented. Nevada law generally requires an express grant of legislative authority to a local government in order before the local government is empowered to act in a particular area. See NRS 244.137; NRS 268.001. Inclusionary zoning programs, particularly mandatory programs with financial obligations, appear to go beyond powers granted to a local government under current law or Senate Bill 398.

