AGENDA

REGULAR MEETING OF THE

PLANNING COMMISSION

TUESDAY, FEBRUARY 1, 2022
6:00 P.M.

Council Chambers, City Hall
212 S. Vanderhurst Avenue, King City, CA

The Planning Commission meeting will be conducted in hybrid in-person/virtual format.
To join the meeting virtually, please use the link below to join the Zoom meeting:

Click on the following link:

https://us02web.zoom.us/j/83162454735?pwd=aHEySzJpTVhZUHN6ZkRjeWEwWWZFdz09

or Call the following number +16699009128 and enter in
Meeting ID: 831 6245 4735

Passcode: 408590

1. **CALL TO ORDER**

2. **FLAG SALUTE**

3. **ROLL CALL:**

   Planning Commission Members: Oscar Avalos, Paulette Bumbalough, David Mendez, Steve Wilson, and Chairperson David Nuck

4. **PUBLIC COMMENTS**

   Any person may comment on any item not on the agenda. ***PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.*** *Action may not be taken on the topic, unless deemed an urgency matter by a majority vote of the Planning Commission. Topics not considered an urgency matter might be referred to City staff and placed on a future agenda, by a majority vote of the Planning Commission.*

5. **PRESENTATIONS**

   A. None

6. **CONSENT AGENDA**

   All matters listed under the Consent Agenda are considered routine and may be approved by one action of the Planning Commission unless any member of the Planning Commission wishes to remove an item for separate consideration.

   A. Meeting Minutes of January 18, 2022 Planning Commission Meeting
      Recommendation: Approve and file.

7. **NON-PUBLIC HEARINGS**

   None

8. PUBLIC HEARINGS

A. Project: Senate Bill 9.

Applicant: City of King

Location: City of King

Consideration: Continued Discussion of Senate Bill 9 and Consideration of Regulations for Urban Lot Splits and Two-unit Developments Pursuant to Senate Bill 9 and Regulations of Accessory Dwelling Units.

Recommendation: Planning Commission
1. Receive a presentation from staff;
2.Open the public hearing to allow public testimony; and
3.Continue the public hearing to February 15, 2022.

Environmental Determination: Ordinances implementing SB 9 are not a "project" for purposes of California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), and therefore do not require any environmental review under CEQA.

9. PLANNING COMMISSIONER REPORTS

10. DIRECTOR'S REPORT

11. WRITTEN CORRESPONDENCE

12. **ADJOURN**

The City of King is an equal opportunity provider and employer.

UPCOMING REGULAR MEETINGS

FEBRUARY 2022

February 1st	6:00 p.m.	Planning Commission
February 8th	6:00 p.m.	City Council
February 14th	6:00 p.m.	Airport Advisory Committee
February 15th	6:00 p.m.	Planning Commission
February 21st	6:00 p.m.	Recreation Commission
February 22nd	6:00 p.m.	City Council

MARCH 2022

March 1st	6:00 p.m.	Planning Commission
March 8th	6:00 p.m.	City Council
March 14th	6:00 p.m.	Airport Advisory Committee
March 15th	6:00 p.m.	Planning Commission
March 21st	6:00 p.m.	Recreation Commission
March 22nd	6:00 p.m.	City Council

ADT: Average daily trips made by vehicles or persons in a 24-hour period

ALUC: Airport Land Use Commission

AMBAG: The Association of Monterey Bay Area Governments. The AMBAG region includes Monterey, San Benito and Santa Cruz Counties, and serves as both a federally designated Metropolitan Planning Organization and Council of Government. AMBAG manages the region's transportation demand model and prepares regional housing, population and employment forecast that are utilized in a variety of regional plans.

APCD: Air Pollution Control District

AR: Architectural Review

BMP: Best Management Practice, Bike Master Plan

CAP: Climate Action Plan

CC&Rs: Covenants, Conditions, and Restrictions (private agreements among property owners; the City has no authority to enforce these)

CDBG: Community Development Block Grant (a federal grant program designed to benefit low and moderate income persons)

CE: Categorical Exemption.

CEQA: California Environmental Quality Act

CFD: Community Facilities District

COG: A council of government, or regional council, is a public organization encompassing a multi-jurisdictional regional community. It serves the local governments by dealing with issues that cross political boundaries.

CUP: Conditional Use Permit

EIR: Environmental Impact Report

EIS: Environmental Impact Statement

Ex-Parte: Communication between Planning Commissioners and applicants outside of a public meeting

FEMA: Federal Emergency Management Agency

GHG: Greenhouse gas

HOME: Home Investment Partnership Act (a federal program to assist housing for low and moderate income households)

HCP: Habitat Conservation Plan

HCD: State Department of Housing & Community Development

HUD: U.S. Department of Housing and Urban Development

LAFCO: Local Agency Formation Commission

LID: Low Impact Development (measures to reduce rainwater runoff impacts)

LLA: Landscaping and Lighting District

LOS: Level of Service (a measurement of traffic efficiency used by Caltrans)

MMTC: A multimodal transit center includes a combination of alternative modes of transportation so people do not have to only rely on vehicles.

MMTC: Multi-modal Transit Center.

MOU: Memorandum of Understanding

MND: Mitigated Negative Declaration

MPO: A metropolitan planning organization is a federally mandated and federally funded transportation policy-making organization, such as AMBAG, that is made up of representatives from local government to help implement transportation projects and projects.

Neg Dec: Negative Declaration (a CEQA statement that a project will not have a significant effect on the environment)

NEPA: National Environmental Policy Act.

SLOCOG: San Luis Obispo Council of Government

SOI: Sphere of Influence.

TAMC: The Transportation Agency for Monterey County develops and maintains a multimodal transportation system for Monterey County. TAMC consists of local officials from each Monterey city (12 cities) and five (5) county supervisorial districts, and ex-officio members from six (6) public agencies.

TOT: Transient Occupancy Tax

Variance: A form of relief from zoning development regulations based on physical constraints of a property that prevents development of the same type of buildings allowed on other properties within the same zone and in the same neighborhood

VMT: Vehicle Miles Traveled

Planning Commission Minutes

January 18, 2022

1. Call to Order

Chair Nuck called the regular meeting of the Planning Commission of the City of King to order at 6:00 p.m.

2. Pledge of Allegiance

Chair Nuck led the Commission and audience in the Pledge of Allegiance.

3. Roll Call

Chairperson David Nuck _X_ Oscar Avalos _X_(Teleconference

Paulette Bumbalough _X__

David Mendez _X_ Steven Wilson __X__

Staff present: Community Development Director, Doreen Liberto; Planner, Maricruz Aguilar (Teleconference; Planning Commission Secretary, Erica Sonne; City Attorney, Brian White-Bushman (Teleconference).

4. Public Comments

None

5. Presentations

A. Swearing in of Steve Wilson to the Planning Commission by Deputy City Clerk Erica Sonne

6. Consent Calendar

All matters listed on the Consent Calendar are considered routine and may be approved by one action of the Planning Commission unless any member of the Planning Commission wishes to remove an item for separate consideration.

A. Approval of Minutes: December 21, 2021

Action: Motion made by Commissioner Bumbalough to approve minutes of December 21, 2021. Seconded by Commissioner Mendez. Motion carried 5-0.

7. NON- PUBLIC HEARINGS –

None

8. PUBLIC HEARINGS

A. Project: King City General Plan Economic Development Element

Applicant: City of King

Location: Citywide

Consideration: The City has an existing Economic Development of the General Plan which is being recommended to be updated. The Economic Development Element establishes goals and policies to promote fiscal stability, expand the City's employment base, and enhance the City's revenues in order to provide quality services to the community.

Recommendation: Adopt a Resolution recommending the City Council adopt the

updated Economic Development Element.

Environmental Determination: The activity is covered by the commonsense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The proposed Economic Development Element will not have the effect of substantially changing regulatory standards or findings required therefore in accordance with CEQA, the proposed ordinance is exempt from CEQA pursuant to Section 15061(b) (3) because the activity is governed by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

Community Development Director Doreen Liberto introduced this item with a PowerPoint presentation.

Chair Nuck opened the public hearing, seeing and hearing no one come forward Chair Nuck asked for a motion to continue the public hearing.

Commissioner Wilson noticed that there was a major focus on the cannabis industry. Community Development Director Liberto stated that the strategic plan was originally a major focus on Cannabis. The City has since changed its it to a focus not a major focus.

Motion by Commissioner Wilson to adopt a Resolution recommending the City Council adopt the updated Economic Development Element. Commissioner Bumbalough seconded. Motion carried 5-0.

B. Project: Continued Item on Ordinance regarding Senate Bill 9.

Applicant: City of King

Location: City of King

Consideration: Continued Discussion of Senate Bill 9 and Consideration of Regulations for Urban Lot Splits and Two-unit Developments Pursuant to Senate Bill 9.

Recommendation: Allow staff to provide an update on Senate Bill 9; re-open the public hearing; accept public comments; and provide input to staff.

Environmental Determination: Ordinances implementing SB 9 are not a “project” for purposes of California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), and therefore do not require any environmental review under CEQA.

Community Development Director Doreen Liberto introduced this item with a PowerPoint presentation going through many of the options for units on lot splits through SB9.

City Attorney, Brian Wright-Bushman further introduced this item and answered some questions.

Chair Nuck opened the public hearing, seeing and hearing no one come forward Chair Nuck closed the public hearing.

9. Regular Business- None

10. Planning Commission Report – Planning Commission mentioned that the Clock at the end of Broadway needs a cleaning and time updated.

11. Director Reports- Multi-Model Transit Center Update.

12. Written Correspondence– None

13. Adjournment

There being no further business, the Planning Commission meeting was adjourned by Chair Nuck at 6:33p.m.

_____
David Nuck
Planning Commission Chairperson
City of King

_____
Erica Sonne
Planning Commission Secretary
City of King

KING CITY
CALIFORNIA

Item No. 8(A)

REPORT TO THE PLANNING COMMISSION

DATE: **FEBRUARY 1, 2022**

TO: **HONORABLE CHAIR AND MEMBERS OF THE PLANNING COMMISSION**

FROM: **DOREEN LIBERTO, AICP, COMMUNITY DEVELOPMENT DIRECTOR**
BRIAN WRIGHT-BUSHMAN, CITY ATTORNEY'S OFFICE

RE: **CONTINUED DISCUSSION OF SENATE BILL 9 AND CONSIDERATION OF REGULATIONS FOR URBAN LOT SPLITS AND TWO-UNIT DEVELOPMENTS PURSUANT TO SENATE BILL 9 AND REGULATIONS OF ACCESSORY DWELLING UNITS**

RECOMMENDATION

Staff recommends the Planning Commission:

1. Receive a presentation from staff;
2. Open the public hearing to allow public testimony; and
3. Continue the public hearing to February 15, 2022.

BACKGROUND

On **December 21, 2021**, the Planning Commission was provided an update on Senate Bill No. 9 (SB 9) and how it impacts the City. The Planning Commission continued the item to **January 18, 2022** so staff could respond to Planning Commission questions and provide additional time to consider whether other Municipal Code Chapters needed to be amended. Staff is refining the language as it relates to changes to various Municipal Code Sections to integrate the provisions of SB 9.

DISCUSSION

Staff is sharpening the language related to amendments to Chapter 17.49 (Condominium Regulations), Title 16 (Subdivisions) and Chapter 17.47 (Accessory Dwelling Units). Staff is also finalizing development standards for accessory dwelling units and junior accessory dwelling units. This information will be presented at the **February 15th** Planning Commission meeting.

During the last Planning Commission meeting, staff presented a diagram showing the types, number and configurations of structures that could be created under lots created through SB 9 and lots not created through SB 9. **Figure 1** illustrates these configurations.

FIGURE 1

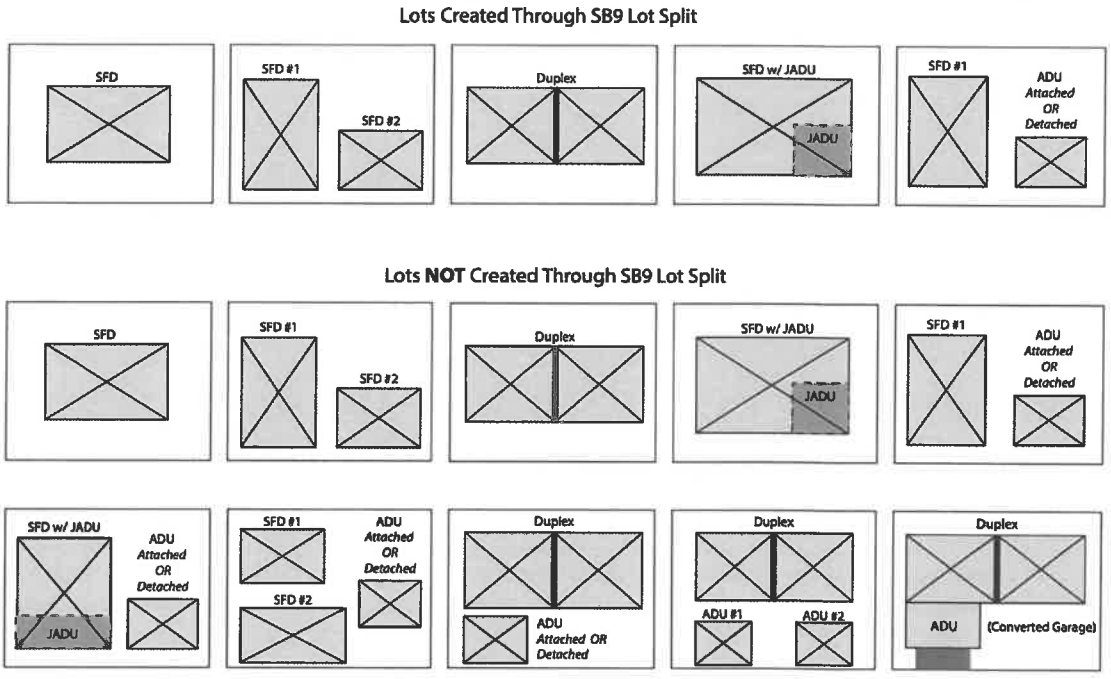

Table 1 includes some of the development standards staff has been discussing. Please note staff is still working on the regulations and an updated table will be presented at the **February 15th** meeting.

TABLE 1 REGULATIONS	
Subdivision Requirements	• Easements for provision of public services. Dedication of rights-of-way are not permitted. • Requirement of offsite improvements are not allowed. • Cannot require nonconforming zoning conditions be corrected. • Easements to ensure subdivided lots have access to the public right-of-way. • No lot shall be smaller than 1,200 square feet. • Neither resulting parcel shall be smaller than 40% of the lot area of the original parcel proposed for subdivision. • No more than two units are permitted on any parcel created by an urban lot split, including ADUs. • Resulting parcel must have access to adjoining public right of way.
Parking	• Can require one parking space per unit. • Cannot require parking if site is within one-half mile of a high-quality transit corridor or a major transit stop, or if there is a car share vehicle within one block of the parcel
Rental Restrictions	• Prohibit short term rental of any units created through SB 9. • For lot splits, the parcel owner must submit an affidavit that they intend to occupy one of units as a principal residence for at least three years. • Residential units constructed on resulting parcels cannot be rented for a term of less than 31 days (no short term rentals). • No additional owner occupancy standards allowed.
Affordable Housing Requirement	• If a unit is rented, it shall be rented at an affordable rent for low-income households as defined in Health and Safety Code Section 50053 AND shall only be rented to low-income households, for a minimum of 55 years. • Prior to issuance of a certificate of occupancy for any second unit or any unit of a two unit development, the owner of the property is required to execute and record on the property a deed restriction establishing said restriction.
Entrances	• Each unit on each lot shall have a separate entrance.
Height	• Second units and units in two-unit development may not be taller than 16 feet in height and more than one story.
Sewer	• Inspection of existing sewer lines or septic tanks (if applicable) is required to ensure adequate capacity for all units.
Setback Requirements	• Side and rear setbacks are limited to four feet or less. • No setback can be required if unit is built within the footprint of an existing structure
Uses	• Only residential uses are permitted.
House Size	• Cannot physically prevent the development of two 800 – 1000 square foot units on each lot
Condos	• SB 9 units cannot be turned into condos and condos are not allowed on parcels created by SB 9 lots splits

ENVIRONMENTAL DETERMINATION:

Ordinances implementing SB 9 are not a "project" for purposes of California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), and therefore do not require any environmental review under CEQA.

Exhibits:

1. December 21, 2021 Planning Commission Staff Report
2. January 18, 2022 Planning Commission Staff Report

Submitted by: Emeia L. Lerma for
Doreen Liberto, AICP, Community Development Director

Exhibit 1

Item No. 8(A)

REPORT TO THE PLANNING COMMISSION

DATE: DECEMBER 21, 2021

TO: HONORABLE CHAIR AND MEMBERS OF THE PLANNING COMMISSION

FROM: DOREEN LIBERTO, AICP, COMMUNITY DEVELOPMENT DIRECTOR
ROY SANTOS, CITY ATTORNEY

RE: DISCUSSION OF SENATE BILL 9 AND CONSIDERATION OF REGULATIONS FOR URBAN LOT SPLITS AND TWO-UNIT DEVELOPMENTS PURSUANT TO SENATE BILL 9

RECOMMENDATION

Staff recommends the Planning Commission:

1. Allow staff to provide a presentation on Senate Bill 9 (SB 9) and proposed regulations for second units, two-unit developments, and lot splits allowed under SB 9;
2. Open the public hearing to allow input on the proposed regulations; and
3. Continue the public hearing to January 18, 2022 and direct staff to bring back an ordinance regulating second units, two-unit developments, and lot splits allowed under SB 9, for consideration by the Planning Commission, that incorporates comments made by the Planning Commission.

BACKGROUND

On September 16, 2021, the Governor signed into law Senate Bill No. 9 (SB 9). This bill requires the ministerial approval of two dwelling units per parcel in single-family residential zones, where previously only one primary dwelling unit would have been permitted. This is in addition to permitting accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs), in some cases. Additionally, SB 9 requires ministerial approval of lot splits in single-family residential zones and allows two units to be built on each resulting parcel.

SB 9 takes effect on January 1, 2022, and it is therefore necessary for the City to establish objective standards regarding housing developments and lot splits to regulate SB 9 projects if it wishes to retain as much local control as possible over the units and lot splits permitted by SB 9. For this reason, Staff has developed proposed regulations, which are summarized below. The full text of SB 9 is included as Attachment A, and a memo from the City Attorney's office regarding SB 8, 9, and 10 is included as Attachment B.

DISCUSSION

SB 9 requires ministerial approval by the City of: (1) two-lot subdivisions of single-family residential lots, (2) development projects for up to two units per lot in single-family zones, and (3) a project that includes both 1 and 2 above. The state law outlines several requirements for the ministerial approval of a two-lot subdivision and/or two-unit development. These include:

- Each new lot must be at least 1,200 square feet;
- Each new lot must be relatively equal in lot area and no lot can be less than 40% of the original lot size;
- Lots previously subdivided via SB 9 cannot be subdivided again; and
- The City cannot establish regulations that prohibit two units of at least 800 square feet in size.

SB 9 also outlines what types of regulations a local jurisdiction can and cannot impose on an SB 9 project, and allows for adoption of "objective standards" by which the Planning Staff of the City can implement SB 9. "Objective standards," in the context of and mandated by SB 9, means standards involving no personal or subjective judgment by a public official and being uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

Table 1 outlines SB 9 regulations.

Table 1

REGULATION	PERMITTED	NOT PERMITTED
Subdivision Requirements	• Easements for provision of public services • Easements to ensure subdivided lots have access to the public right-of-way	• Dedication of rights-of-way • Construction of offsite improvements • Correction of nonconforming zoning conditions

Objective Standards	• Objective zoning standards, subdivision standards, and design standards	• No setback can be required if unit is built within the footprint of an existing structure • Otherwise, maximum 4-foot setback from side and rear yards • Standards cannot physically prevent the development of two 800 square foot units on each lot
Parking	• Can require one parking space per unit	• Cannot require parking if site is within one-half mile of a high-quality transit corridor or a major transit stop, or if there is a car share vehicle within one block of the parcel
Rental Restrictions	• Prohibit short term rental of any units created through SB 9 • For lot splits, applicants must submit an affidavit that they intend to occupy one of units as a principal residence for at least three years	• No additional owner occupancy standards allowed

Proposed Regulations

Objective Standards for Urban Lot Splits

The proposed lot split standards include the following:

- Urban lot splits are only permitted in an R-1 or S-F zoning district;
- Parcels proposed for a lot split must meet all the requirements of state law, as further spelled out in the proposed ordinance;
- No lot resulting from an urban lot split shall be smaller than 1,200 square feet;
- Neither resulting parcel shall be smaller than 40% of the lot area of the original parcel proposed for subdivision;
- No more than two units are permitted on any parcel created by an urban lot split, including accessory dwelling units;

- Easements must be dedicated for the provision of public services and facilities;
- Each resulting parcel must have access to adjoin the public right-of-way;
- Residential units constructed on resulting parcels cannot be rented for a term of less than 31 days (no short-term rentals); and
- Urban lot splits must comply with all other requirements for lot splits under the municipal code unless they conflict with the specific requirements in the ordinance.

Additionally, state law allows the City to deny an application for an urban lot split if the Building Official finds that the project would have a specific, adverse impact upon public health and safety or the physical environment, provided that there is no feasible mitigation measure.

Objective Standards for Units Constructed

The proposed regulations for second units and two-unit developments include the following:

- Units may only be located in the R-1 or S-F zoning districts;
- Units may not be larger than 800 square feet;
- Second units, and units in a two-unit development, may not be taller than 16 feet in height and no more than one story;
- Each unit on each lot shall have a separate entrance;
- One off-street parking space is required for a second unit and one off-street parking space per unit is required for each unit of a two-unit development (unless parking cannot be required per state law);
- No setback beyond the existing setback shall be required for an existing structure or for a unit constructed in the same location and to the same dimensions as an existing structure. In all other circumstances, second units, and both units of a two-unit development, shall be set back at least 4 feet from the side and rear lot lines;
- Inspection of existing sewer lines or septic tanks (if applicable) is required to ensure adequate capacity for all units;
- Unit cannot be rented for a term of less than 31 days (no short-term rentals); and
- All standards applicable to primary dwelling on the parcel apply unless they would prevent the construction of up to two units that are 800 square feet.

To the extent possible, these objective standards outline what is allowed under the provisions of SB 9 and provide for development that is not inconsistent with the character of the single-family neighborhoods in the City. Additionally, as with SB 9 lot splits, the City may deny an application for a second unit or two-unit development if the Building Official finds that the project would have a specific, adverse impact upon public health and safety or the physical environment, provided that there is no feasible mitigation measure.

Affordability Requirement

Staff also recommends requiring that second units, and both units of a two-unit development, if rented, shall only be rented at an affordable rent for low-income households, as defined in Health and Safety Code Section 50053, and shall only be rented to low-income households, for a minimum of 55 years. Prior to the issuance of a certificate of occupancy for any second unit or any unit of a two-unit development, the owner of the property would be required to execute and record on the property a deed restriction establishing this restriction.

This is not required by state law, but is permitted, and would further the City's goal of ensuring that households of all income levels can obtain adequate and affordable housing.

ENVIRONMENTAL DETERMINATION:

Ordinances implementing SB 9 are not a "project" for purposes of California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), and therefore do not require any environmental review under CEQA.

Exhibits:

1. Text of SB 9
2. Memo from City Attorney's Office

Submitted and Approved by:

MA FOR Doreen Liberto
Doreen Liberto, Community Development Director

Senate Bill No. 9

CHAPTER 162

An act to amend Section 66452.6 of, and to add Sections 65852.21 and 66411.7 to, the Government Code, relating to land use.

[Approved by Governor September 16, 2021. Filed with Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, Atkins. Housing development: approvals.

The Planning and Zoning Law provides for the creation of accessory dwelling units by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards and conditions.

This bill, among other things, would require a proposed housing development containing no more than 2 residential units within a single-family residential zone to be considered ministerially, without discretionary review or hearing, if the proposed housing development meets certain requirements, including, but not limited to, that the proposed housing development would not require demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the proposed housing development does not allow for the demolition of more than 25% of the existing exterior structural walls, except as provided, and that the development is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving the construction of 2 residential units, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of up to 2 units or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24

months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a local agency to ministerially approve a parcel map for an urban lot split that meets certain requirements, including, but not limited to, that the urban lot split would not require the demolition or alteration of housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income, that the parcel is located within a single-family residential zone, and that the parcel is not located within a historic district, is not included on the State Historic Resources Inventory, or is not within a site that is legally designated or listed as a city or county landmark or historic property or district.

The bill would set forth what a local agency can and cannot require in approving an urban lot split, including, but not limited to, authorizing a local agency to impose objective zoning standards, objective subdivision standards, and objective design standards, as defined, unless those standards would have the effect of physically precluding the construction of 2 units, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

The bill would also extend the limit on the additional period that may be provided by ordinance, as described above, from 12 months to 24 months and would make other conforming or nonsubstantive changes.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

This bill, by establishing the ministerial review processes described above, would thereby exempt the approval of projects subject to those processes from CEQA.

The California Coastal Act of 1976 provides for the planning and regulation of development, under a coastal development permit process, within the coastal zone, as defined, that shall be based on various coastal resources planning and management policies set forth in the act.

This bill would exempt a local agency from being required to hold public hearings for coastal development permit applications for housing developments and urban lot splits pursuant to the above provisions.

By increasing the duties of local agencies with respect to land use regulations, the bill would impose a state-mandated local program.

The bill would include findings that changes proposed by this bill address a matter of statewide concern rather than a municipal affair and, therefore, apply to all cities, including charter cities.

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 no reimbursement is required by this act for specified reasons.

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

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(2) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(3) Notwithstanding any provision of this section or any local law, the proposed housing development would not require demolition or alteration of any of the following types of housing:

(A) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(B) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(C) Housing that has been occupied by a tenant in the last three years.

(4) The parcel subject to the proposed housing development is not a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless the housing development meets at least one of the following conditions:

(A) If a local ordinance so allows.

(B) The site has not been occupied by a tenant in the last three years.

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(b) (1) Notwithstanding any local law and except as provided in paragraph (2), a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this section.

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(B) (i) Notwithstanding subparagraph (A), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(ii) Notwithstanding subparagraph (A), in all other circumstances not described in clause (i), a local agency may require a setback of up to four feet from the side and rear lot lines.

(c) In addition to any conditions established in accordance with subdivision (b), a local agency may require any of the following conditions when considering an application for two residential units as provided for in this section:

(1) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop, as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is

no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

(g) Notwithstanding subparagraph (B) of paragraph (2) of subdivision (b), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(i) For purposes of this section, all of the following apply:

(1) A housing development contains two residential units if the development proposes no more than two new units or if it proposes to add one new unit to one existing unit.

(2) The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(3) "Local agency" means a city, county, or city and county, whether general law or chartered.

(j) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for a housing development pursuant to this section.

SEC. 2. Section 66411.7 is added to the Government Code, to read:

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

(2) (A) Except as provided in subparagraph (B), both newly created parcels are no smaller than 1,200 square feet.

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

(C) The parcel satisfies the requirements specified in subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision (a) of Section 65913.4.

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) Housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.

(ii) Housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power.

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(iv) Housing that has been occupied by a tenant in the last three years.

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or within a site that is designated or listed as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

(b) An application for a parcel map for an urban lot split shall be approved in accordance with the following requirements:

(1) A local agency shall approve or deny an application for a parcel map for an urban lot split ministerially without discretionary review.

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division

2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

(c) (1) Except as provided in paragraph (2), notwithstanding any local law, a local agency may impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to a parcel created by an urban lot split that do not conflict with this section.

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(3) (A) Notwithstanding paragraph (2), no setback shall be required for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure.

(B) Notwithstanding paragraph (2), in all other circumstances not described in subparagraph (A), a local agency may require a setback of up to four feet from the side and rear lot lines.

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

(1) Easements required for the provision of public services and facilities.

(2) A requirement that the parcels have access to, provide access to, or adjoin the public right-of-way.

(3) Off-street parking of up to one space per unit, except that a local agency shall not impose parking requirements in either of the following instances:

(A) The parcel is located within one-half mile walking distance of either a high-quality transit corridor as defined in subdivision (b) of Section 21155 of the Public Resources Code, or a major transit stop as defined in Section 21064.3 of the Public Resources Code.

(B) There is a car share vehicle located within one block of the parcel.

(f) A local agency shall require that the uses allowed on a lot created by this section be limited to residential uses.

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the

housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a "community land trust," as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a "qualified nonprofit corporation" as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

(h) A local agency shall require that a rental of any unit created pursuant to this section be for a term longer than 30 days.

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, "unit" means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

(k) Notwithstanding paragraph (3) of subdivision (c), an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.

(*l*) Local agencies shall include the number of applications for parcel maps for urban lot splits pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

(m) For purposes of this section, both of the following shall apply:

(1) "Objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) "Local agency" means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be

considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

(o) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local agency shall not be required to hold public hearings for coastal development permit applications for urban lot splits pursuant to this section.

SEC. 3. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 24 months. However, if the subdivider is required to expend two hundred thirty-six thousand seven hundred ninety dollars ($236,790) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way that abut the boundary of the property to be subdivided and that are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 48 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars ($236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) "Public improvements," as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency that approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies that regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 4. The Legislature finds and declares that ensuring access to affordable housing is a matter of statewide concern and not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, Sections 1 and 2 of this act adding Sections 65852.21 and 66411.7 to the Government Code and Section 3 of this act amending Section 66452.6 of the Government Code apply to all cities, including charter cities.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or

because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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EXHIBIT 2

ALESHIRE & WYNDER LLP
ATTORNEYS AT LAW

CONFIDENTIAL MEMORANDUM

TO: **Steve Adams, City Manager**
Doreen Liberto-Blank,

FROM: **Brian Wright-Bushman, Deputy City Attorney**
Shannon Chaffin, Assistant City Attorney

DATE: **October 8, 2021**

RE: **Legislation Update: SB 8, 9, & 10**

This memorandum provides a summary of Senate Bills 8, 9, and 10, signed into law in September 2021 and taking effect January 1, 2022. Section IV of this memo suggests options for responding to these new laws. Please note that these laws are complicated and this memo is only intended to provide a summary. Please contact the City Attorney's office with any questions you may have.

I. SENATE BILL 8 – EXTENSION AND AMENDMENT OF SENATE BILL 330

SB 8 is essentially an extension and modification of SB 330, also known as the Housing Crisis Act of 2019, which took effect on January 1, 2020. SB 330 implemented several measures aimed at streamlining the approval process for housing development projects and increasing housing production, including the following:

(a) It created the preliminary application process, which allows housing developers to lock in the development standards applicable to a housing project by filing a pared-down "preliminary application." Subject to limited exceptions, cities must consider housing development applications based on the general plan, zoning, and subdivision standards that were in place on the date the completed preliminary application was submitted.

(b) It limited cities to a total of five hearings to consider approval of a housing development application after the application is deemed complete.

(c) It placed limits on the criteria cities could use when determining if a housing application was complete.

(d) It prohibited "affected cities" from enacting any development policy, standard, or condition that would have the effect of reducing the intensity of the land use of a parcel where housing is an allowable use below what was allowed under the city's policies and ordinances in effect on January 1, 2018.

SB 330 was previously set to expire on January 1, 2025. SB 8 has now extended the applicable term of SB 330 until January 1, 2030.

SB 8 also modifies or clarifies several provisions of SB 330, including the following:

(a) SB 330 allows cities to apply standards to housing projects that were adopted *after* the preliminary application was submitted in a few situations, including when the housing project has not commenced construction within 2 ½ years following the date the project received final approval. SB 8 extends this time period to 3 ½ years for affordable housing projects (as defined in Government Code Section 65589.5(o)(2)(D)(i)).

(b) SB 8 clarifies that "hearing," for purposes of the 5-hearing limitation in Government Code Section 95905.5, includes (i) appeals, except for appeals of a legislative approval such as a general plan or zoning amendment, and (ii) a "meeting related to [Government Code] Section 65915." Government Code Section 65915(d) and (e), part of California's density bonus law, allow the developer to request a "meeting" with a city to discuss development incentives and concessions, or other reductions of development standards. Such a meeting now counts toward the 5-hearing limit.

(c) As described above, SB 330 prohibits affected cities from reducing the intensity of land use (for parcels where housing is an allowable use) below what was in effect on January 1, 2018. However, there is an exception when the city "concurrently" changes the standards applicable to other parcels so that there is no net loss in residential capacity. SB 8 clarifies that this exception includes actions by the legislative body through the initiative process, and also clarifies the meaning of "concurrently" in different situations. (See changes to Gov. Code § 66300(i).)

(d) SB 330 requires developers to provide relocation benefits to existing tenants when a housing development project will require the demolition of occupied or vacant "protected units" (essentially, rent-controlled units or units with affordability covenants) and a right of first refusal of a comparable unit in the new housing development at an affordable rent or sale price. SB 8 places limits on these requirements. For more details, see revisions made to GC Section 66300(d).

II. SENATE BILL 9 – MINISTERIAL APPROVAL OF TWO UNITS & LOT SPLITS

SB 9 requires the ministerial approval of two units on parcels in a single-family zone and the ministerial approval of lots splits for parcels in a single-family zone, subject to certain requirements. A separate section (C) is provided below to address how ADUs and JADUs are handled under SB 9. Section (D), below, addresses how SB 9 relates to HOAs and CC&Rs. SB 9 also amends requirements in the Subdivision Map Act regarding the initial duration of all tentative maps. These amendments are discussed in section (E), below.

A. Ministerial Approval of Two Dwelling Units (Gov. Code § 65852.21)

SB 9 requires cities to ministerially approve two residential units on a single parcel in a single-family residential zone, without discretionary review or hearing, if the proposed development meets certain requirements. This includes both a proposal for two new units and a proposal to add one new unit to a parcel with one existing unit.

1. ***Requirements for Approval***

In order to qualify for ministerial approval, a proposed residential development must meet the following requirements:

(a) The subject parcel must be located in a city that includes some portion of either an "urbanized area" or an "urban cluster," as designated by the U.S. Census Bureau. Notably, the parcel itself is not required to be in the urbanized are or urban cluster.

(b) The subject parcel must meet the requirements in Government Code Section 65913.4(a)(6)(B)-(K). Essentially, the parcel may not be located in or on: prime farmland, farmland of statewide importance, or land zoned or designated for agricultural protection or preservation by an approved local ballot measure; wetlands; a high or very high fire severity zone, as determined by the California Department of Forestry and Fire Protection, unless the site has adopted fire hazard mitigation measures pursuant to existing state standards or state fire mitigation measures applicable to the development; a hazardous waste site; a delineated earthquake fault zone, as determined by the State Geologist; a special flood hazard area subject to inundation by the 100-year flood, as determined by FEMA; a regulatory floodway, as determined by FEMA; land identified for conservation in an adopted natural community conservation plan; habitat for protected species; or land under a conservation easement.

(c) The proposed housing development must not require the demolition or alteration of any of the following types of housing: housing restricted to affordable rent by a covenant, ordinance, or other law; housing subject to any form of rent or price control; or housing that has been occupied by a tenant in the last three years.

(d) An owner of residential property on the parcel must not have exercised the owner's rights under Government Code Section 7060 *et seq.* to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(e) The proposed development must not allow the demolition of more than 25% of existing exterior structural walls, unless: (i) allowed by a local ordinance or (ii) the site has not been occupied by a tenant in the last three years.

(f) The parcel must not be located in a historic district or property included in the State Historic Resources Inventory, or on a site designated as a city or county landmark or historic property or district pursuant to a city or county ordinance.

2. ***Development Standards***

A city may impose objective zoning, subdivision, and design review standards on these residential developments. However, the following limitations apply (many of which are similar to the limitations on development standards for ADUs):

(a) Size. The city cannot impose any standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

(b) Setbacks. The city cannot require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. In all other situations, the city may require a setback of up to 4 feet from the side and rear lot lines.

(c) Connected Units. The units may either be detached from one another or connected, so long as the units meet building code safety standards and are sufficient to allow separate conveyance.

(d) Parking. The city can require up to one off-street parking space per unit, except that a city cannot impose any parking requirements if either: (i) the parcel is located within a half-mile walking distance of a high-quality transit corridor or a major transit stop (see definitions in Public Resources Code Sections 21155 and 21064.3), or (ii) there is a car share vehicle located within one block of the parcel.

(e) Wastewater. For residential units connected to an onsite wastewater treatment system, the city may require a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

3. *Grounds for Denial*

Notwithstanding the requirement for ministerial approval, a city may deny a proposed housing development project if the building official makes a written finding based upon a preponderance of the evidence, that the proposed housing development project would have a specific adverse impact, as defined Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

4. *No Short-Term Rentals*

Cities must prohibit rental of any unit created under this law for a term of 30 days or less. This can be done through a covenant recorded on the property, as is commonly done with ADUs.

5. *Annual Housing Element Report*

Units constructed pursuant to this law must be included in the city's annual housing element report. (See Gov. Code § 65400(a)(2)(I).)

6. *Charter Cities and Coastal Act*

This law applies to general law and charter cities. This law does not supersede the Coastal Act, except that a city is not required to hold public hearings for coastal development permit applications for lot splits under this law.

7. *CEQA*

Adoption of an ordinance to implement this law (Government Code Section 65852.21) is not a project for purposes of CEQA, and is therefore not subject to CEQA review.

B. Ministerial Approval of Lot Split (Government Code § 66411.7)

SB 9 also requires cities to ministerially approve a parcel map for a lot split, if the lot split meets certain requirements.

1. *Requirements for Approval*

In order to qualify for ministerial approval, the parcel map must meet the following requirements:

(a) The map can only create two parcels.

(b) Neither new parcel may be smaller than 40% of the lot area of the original parcel being divided. Furthermore, neither new parcel shall be smaller than 1,200 square feet, except that the city may adopt a smaller minimum lot size that will be subject to ministerial approval.

(c) The parcel being divided must be in a single-family residential zone.

(d) The parcel being divided must be located in a city that includes some portion of either an "urbanized area" or an "urban cluster," as designated by the U.S. Census Bureau. Notably, the parcel itself is not required to be in the urbanized area or urban cluster.

(e) The parcel being divided must meet the requirements in Government Code Section 65913.4(a)(6)(B)-(K). (See explanation in Section II.A.1(b), above.)

(f) The proposed lot split must not require the demolition or alteration of any of the following types of housing: housing restricted to affordable rent by a covenant, ordinance, or other law; housing subject to any form of rent or price control; or housing that has been occupied by a tenant in the last three years.

(g) The parcel being divided must not be located in a historic district or property included in the State Historic Resources Inventory, or on a site designated as a city or county landmark or historic property or district pursuant to a city or county ordinance.

(h) The parcel being divided must not have been established through a prior lot split under this law.

(i) Neither the owner of the parcel being divided nor any other person acting in concert with the owner shall have previously subdivided any adjacent parcel under this law.

(j) The lot split must conform to all applicable requirements of the Subdivision Map Act, except as otherwise expressly provided by this law.

2. *Development Standards*

A city may impose objective zoning, subdivision, and design review standards on parcels created by a lot split under this law. However, the following limitations apply (many of which are similar to the limitations on development standards for ADUs):

(a) Size. The city cannot impose any standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

(b) Setbacks. The city cannot require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as an existing structure. In all other situations, the city may require a setback of up to 4 feet from the side and rear lot lines.

(c) Easements. The city may require easements for the provision of public services and facilities.

(d) Access to Right-of-Way. The city may require that the new parcels have access to, provide access to, or adjoin the public right-of-way.

(e) Parking. The city can require up to one off-street parking space per unit, except that a city cannot impose any parking requirements if either: (i) the parcel is located within a half mile walking distance of a high-quality transit corridor or a major transit stop (see definitions in Public Resources Code Sections 21155 and 21064.3), or (ii) there is a car share vehicle located within one block of the parcel.

3. *Other Requirements and Limitations*

The following additional requirements and limitations also apply

(a) Residential Uses Only. The city must require that only residential uses are allowed on a new parcel created by this law.

(b) No Dedications or Offsite Improvements. The city may not require dedications of right-of-way or the construction of off-site improvements as a condition of approving a lot split under this law.

(c) Owner Occupancy. The city must require an applicant for a lot split under this law to sign an affidavit stating that the applicant intends to occupy one of the housing units as their primary residence for a minimum of three years from the date of the approval of the lot split.

However, this requirement does not apply if the applicant is a community land trust or a qualified nonprofit corporation. No other owner-occupancy requirements may be imposed.

(d) No Short-Term Rentals. Cities must prohibit rental of any unit created under this law for a term of 30 days or less. This can be done through a covenant recorded on the property, as is commonly done with ADUs.

(e) Non-Conforming Zoning Conditions. Cities cannot require the correction of non-conforming zoning conditions as a condition of approval of a parcel map under this law.

4. *Grounds for Denial*

Notwithstanding the requirement for ministerial approval, a city may deny a proposed lost split under this law if the building official makes a written finding based upon a preponderance of the evidence, that the proposed housing development project would have a specific adverse impact, as defined Government Code Section 65589.5(d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

5. *Annual Housing Element Report*

The number of applications for lot splits under this law must be included in the city's annual housing element report. (See Gov. Code § 65400(a)(2)(I).)

6. *Charter Cities and Coastal Act*

This law applies to general law and charter cities. This law does not supersede the Coastal Act, except that a city is not required to hold public hearings for coastal development permit applications for lot splits under this law.

C. Accessory Dwelling Units Under SB 9

Subject to certain requirements, cities are usually required to ministerially approve applications for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) on residential lots. However, SB 9 makes a few exceptions to this rule.

(a) New Parcels Created By Lot Split Under SB 9. Cities are not required to permit more than two units on any parcel created by a lot split under SB 9. (See Gov. Code § 65852.21(f) & 66411.7(j).) For purposes of this law, "unit" includes ADUs and JADUs.

For example, imagine the owner of a lot created two new parcels through an SB 9 lot split, and built one single-family home on each new parcel. Under normal circumstances, the city would be required to approve an application for both an ADU and a JADU on each of those parcels (resulting in 3 units on each parcel). However, under SB 9, the city only has to approve either an ADU or a JADU, but not both (for a total of 2 units).

As a variation of this example, imagine the owner of a lot created two new parcels through an SB 9 lot split, and built 2 single-family homes on each new parcel, using the authority provided by SB 9. In this circumstance, each parcel already has 2 units on it, so the city is not required to permit either an ADU or a JADU on either parcel.

(b) Parcels With Two Units, But Not Resulting from a Lot Split Under SB 9. If the owner of a parcel builds two units on the parcel using the authorization in SB 9, but does not split the lot, then standard ADU/JADU law applies to that parcel. SB 9 does not create an exception to ADU/JADU law in this circumstance. Consequently, up to 4 units (including ADUs and JADUs) could be built on such a parcel.

D. Homeowners Associations (HOAs) and CC&Rs

SB 9 does not place any limits on the ability of a homeowners association or other private parties to prohibit lot splits or prohibit more than one primary dwelling unit on each lot. Effective January 1, 2020, the state legislature prohibited provisions in CC&Rs and other deed restrictions that effectively prohibit or unreasonably restrict the construction or use of an ADU or JADU on a single-family lot. (See Gov. Code § 4751.) However, so far, no such provision has been adopted prohibiting HOAs and private parties from limiting the implementation of SB 9. In other words, if an HOA amended its CC&Rs to prohibit lots splits or to prohibit more than one primary dwelling unit per parcel, it currently appears that this requirement would be valid.

E. Initial Duration of Tentative Maps

SB 9 also makes amendments to Government Code Section 66452.6, regarding the initial duration of tentative maps. Under current law, an approved tentative map has an initial life of 24 months, except that a city may extend the initial life up to 12 additional months, for a total of 36 months. Under SB 9, cities may now allow tentative maps to have an initial life of 48 months.

III. SENATE BILL 10 – ENABLES UPZONING WHERE OTHERWISE LIMITED

*Note: There is at least one current lawsuit challenging the constitutionality of SB 10, so the future of this bill is uncertain.

SB 10 (codified at Government Code Section 65913.5) allows a city council to override any local density controls – including restrictions enacted by local initiative – in order to re-zone a parcel for up to 10 residential units per parcel, subject to certain limitations.

(a) Location of Parcels. This law is limited to parcels in "transit-rich areas" and "urban infill sites," as defined. Furthermore, it does not apply to parcels located in a very high fire hazard severity zone, as determined by the California Department of Forestry and Fire Protection, unless the site has adopted fire hazard mitigation measures pursuant to existing state standards or state fire mitigation measures applicable to the development.

(b) Limitation for Open-Space, Parks, and Recreation Land. This law does not allow a city council to override any local restriction enacted or approved by a local initiative that designates publicly owned land as open-space land (as defined in Government Code Section 65560(h)), or for park or recreation purposes.

(c) Procedural Requirements. When adopting a zoning ordinance pursuant to this law, a city must comply with the following requirements:

(i) The ordinance must include a statement that the ordinance is adopted pursuant to this law, and must clearly demarcate the areas that are being rezoned.

(ii) The city council must make a finding that the increased density authorized by the ordinance is consistent with the city's obligation to affirmatively further fair housing, pursuant to Government Code Section 8899.50.

(iii) If the ordinance overrides any zoning restriction established by a local initiative, the ordinance may only take effect if adopted by a two-thirds vote of the members of the city council.

(d) CEQA.

(i) Zoning Ordinance. An ordinance adopted pursuant to this law does not count as a "project" for CEQA purposes, and is therefore not subject to CEQA review.

(ii) Development Project. This law also establishes CEQA requirements for projects developed on a site that is rezoned pursuant to this section, but they are too complicated to be helpfully summarized. Please refer CEQA questions to the City Attorney's office.

(e) Additional Limitations. An ordinance adopted pursuant to this law cannot reduce the density of any parcel. Furthermore, if the density of a parcel is increased under this law, the city council cannot subsequently reduce the density of the parcel.

(f) Partial Sunset Clause. Zoning ordinances enacted under this law must be adopted before January 1, 2029, but ordinances enacted under this law may be effective beyond January 1, 2029.

IV. OPTIONS FOR RESPONDING TO THESE BILLS

The response that a city will have to these new laws will vary for city to city depending on each city's approach to housing issues. However, here are a few possible responses to consider:

(a) SB 8. No actions are needed in response to SB 8, other than to be aware of the revisions to the SB 330 requirements and act in compliance with them.

(b) Actions to Encourage Development of Housing. If a city wants to make it easier to develop housing, the city can do all or some of the following:

(i) Adopt an ordinance decreasing the allowable size of a new parcel resulting from a lot split. (See Section II.B.1(b) of this memo.)

(ii) Adopt more lenient standards for when existing walls may be demolished as part of project placing two units on a lot. (See Section II.A.1(e) of this memo.)

(iii) Revise the city's subdivision ordinance to allow tentative maps to have an initial life of 48 months. (See Section II.E of this memo.)

(iv) Consider upzoning an otherwise restricted property pursuant to SB 10. However, please consult with our office regarding the status of current litigation concerning SB 10. (See Section III of this memo.)

(c) Actions to Maximize Local Control of Housing and Limit Utilization of SB 9.

(i) Adopt Objective Development Standards. In order to preserve maximum local control, cities should review the city's current zoning, subdivision, and design review standards applicable to single-family homes, duplexes, and lot splits, and ensure that these are objective and cover all of the issues the city is concerned about. Standards that are not objective will not be enforceable, if challenged. If revisions are necessary, these revisions should be made as soon as possible, as SB 9 goes into effect on January 1, 2022.

Objective standards are defined as: "standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances."

(ii) Limit on Size of SB 9 Unit. Perhaps the most important objective development standard cities should consider adopting is a limit on the size of units created under SB 9 or units on parcels that result from an SB 9 lot split. The smallest limit cities may set is 800 s.f. per unit. Strict limits on size may discourage utilization of SB 9 because the size limit may make the units undesirable or economically infeasible to develop.

(iii) Fire Hazard Severity Zones and Other Restricted Locations. Cities should review what portions, if any, of their cities are within restricted zones, which are excluded from SB 9. Perhaps most pertinently, these areas include high and very high fire hazard severity zones and historic districts. Notably, the fire zone exception does not apply if the site has adopted fire hazard mitigation measures pursuant to existing state standards or state fire mitigation measures

applicable to the development. (See Section II.A.1(b) and Section II.B.1(e) of this memo for a full list of exempt locations.)

(d) Update Zoning and Subdivision Ordinances. Eventually, cities may wish to update their zoning and subdivision ordinances, including but not limited to permitted uses in single-family zones and lot split requirements, to incorporate SB 9 requirements. However, SB 9 will preempt any inconsistencies in local codes, so there is no need to have these changes in place by January 1, 2022.

(e) CC&Rs and Other Deed Restrictions – Private Option. City residents concerned about these laws, and who live in housing tracts with HOAs, may wish to work with their HOAs to amend the CC&Rs governing to tract to prohibit lot splits and more than one primary dwelling on each parcel. Residents that do not live in developments with HOAs may still be able to enter into restrictive covenants with their neighbors including the same prohibitions. However, this will require private action and is outside of city control. Furthermore, city residents should seek private legal advice about the legality of such covenants and restrictions.

[END]

Item No. 8 (B)

REPORT TO THE PLANNING COMMISSION

DATE: JANUARY 18, 2022

TO: HONORABLE CHAIR AND MEMBERS OF THE PLANNING COMMISSION

FROM: DOREEN LIBERTO, AICP, COMMUNITY DEVELOPMENT DIRECTOR
ROY SANTOS, CITY ATTORNEY

RE: CONTINUED DISCUSSION OF SENATE BILL 9 AND CONSIDERATION OF REGULATIONS FOR URBAN LOT SPLITS AND TWO-UNIT DEVELOPMENTS PURSUANT TO SENATE BILL 9

RECOMMENDATION

Staff recommends the Planning Commission:

1. Allow staff to provide a presentation on Senate Bill 9 (SB 9) and proposed regulations for second units, two-unit developments, and lot splits allowed under SB 9;
2. Open the public hearing to allow input on the proposed regulations; and
3. Continue the public hearing to February 1, 2022 (the item is being re-noticed).

BACKGROUND

On **December 21, 2021**, the Planning Commission was provided an update on Senate Bill No. 9 (SB 9) and how it impacts the City. The Planning Commission continued the item to **January 18, 2022** so staff could respond to Planning Commission questions and provide additional time to consider whether other Municipal Code Chapters needed to be amended.

DISCUSSION

The City Attorney is working on amending Chapter 17.49 (Condominium Regulations) in addition to refining language for Title 16 (Subdivisions) and Chapter 17.47 (Accessory Dwelling Units). Amending other Municipal Code sections requires the item begin re-noticed to specify changes.

The Planning Commission requested staff provide an estimate of the number of existing R-1 lots and the number of potential units that could be created pursuant to SB 2. There are 1093 R-1 lots, not including Mills Ranch and Arboleda Specific Plan areas. Due to the requirements of SB 9, it appears very few lots in Mills Ranch and Arboleda Specific Plan areas could be subdivided or construct additional units. Worst case citywide, and using 4 units ***per existing lot***, 4,372 units could exist under SB 9. Without doing a lot by lot assessment, the precise number is difficult to identify. Staff will provide the Planning

Commission with diagrams at the **February 1, 2022** meeting to illustrate the various lot and unit configurations.

ENVIRONMENTAL DETERMINATION:

Ordinances implementing SB 9 are not a "project" for purposes of California Environmental Quality Act (CEQA) pursuant to Government Code Sections 65852.21(j) and 66411.7(n), and therefore do not require any environmental review under CEQA.

Exhibit:

1. December 21, 2021 Planning Commission Staff Report

Submitted by: VA For Doreen Liberto
Doreen Liberto, AICP, Community Development Director