Court of Appeal, Second Appellate District
Eva McClintock
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Court of Appeal, Second Appellate District
Eva McClintock
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Case No. B321477

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

YES IN MY BACK YARD, et al.,

Respondents and Petitioners,

v.

CITY OF CULVER CITY, et al.

Appellants and Respondents.

MOTION FOR JUDICIAL NOTICE

On Appeal From the Superior Court
for the State of California,
County of Los Angeles, Case No. 20STCV43253
Hon. Mary H. Strobel

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Appellants, City of Culver City and City Council of the City of Culver City, respectfully request that the Court take judicial notice of the following, copies of which are attached as exhibits hereto:

Exhibit 1: Stats.1982, c. 1440, operative July 1, 1983

Exhibit 2: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed in *City of Redondo Beach, et al., v. Bonta,* Los Angeles Superior Court Case No. 22STCP01143, filed March 29, 2022

Exhibit 3: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed in *City of Rancho Palos Verdes, et al., v. Bonta,* Los Angeles Superior Court Case No. 22STCP02369, filed June 23, 2022.

DATED: April 20, 2023

ALESHIRE & WYNDER, LLP

JUNE S. AILIN
PAM K. LEE

By: 

JUNE S. AILIN
Attorneys for Appellants,
CITY OF CULVER CITY and
CITY COUNCIL OF THE CITY
OF CULVER CITY

MEMORANDUM OF POINTS AND AUTHORITIES

An appellate court has the same power to take judicial notice as the trial court. (Evid. Code § 459; *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 881; *Smith v. Selma Community Hosp.* (2010) 188 Cal.App.4th 1, 45.)

The requesting party must give adverse parties sufficient notice of the request to enable the adverse parties to prepare to meet the request and provide the court with sufficient information to enable it to take judicial notice of the matter. (Evid. Code § 453.) This motion meets those requirements.

The party requesting judicial notice must also show the material is relevant to a material issue in the case. (*People ex. rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422 fn. 2.)

Exhibit 1, Stats.1982, c. 1440, operative July 1, 1983, is a bill adopted by the Legislature and signed by the Governor. Judicial notice of California statutory law is mandatory. (Evid. Code § 451(a); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 848, fn. 6.) The legislative findings in Section 2 of the bill are relevant to whether accessory dwelling units are housing for lower income households, which YIMBY disputed in the court below. (AA 168-169; Appellants' Opening Brief at 56-57)

Exhibits 2 and 3 are copies of the initial pleadings in cases challenging legislation allowing property owners to split single family residential lots and construct two single family homes on each lot. These pleadings are relevant because

they show there is not a general consensus that the state's housing policies seeking to increase density in single family neighborhoods are beneficial. One element of the trial court's ruling regarding YIMBY's motion for attorneys' fees being challenged by Appellants is the trial court's conclusion the outcome of the case benefits the public or a significant segment of the public. (Appellants' Opening Brief at 61-63) Pleadings filed in California courts are court records which are subject to discretionary judicial notice pursuant to Evidence Code § 452(d)(1).

DATED: April 20, 2023 ALESHIRE & WYNDER, LLP

JUNE S. AILIN
PAM K. LEE

By: 

JUNE S. AILIN
Attorneys for Appellants,
CITY OF CULVER CITY and
CITY COUNCIL OF THE CITY
OF CULVER CITY

DECLARATION

DECLARATION OF JUNE S. AILIN

I, June S. Ailin, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am a partner with of the law firm of Aleshire & Wynder, LLP, counsel of record for Appellants, City of Culver City and City Council of the City of Culver City, from the inception of this case and in this appeal. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Attached hereto is a true and correct copy of Stats.1982, c. 1440, operative July 1, 1983. This copy was obtained at the following URL: https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/archive/Statutes/1982/82Vol4.PDF

3. Attached hereto is a true and correct copy of the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed on March 29, 2022 in *City of Redondo Beach, et al., v. Bonta,* Los Angeles Superior Court Case No. 22STCP01143. My law firm represents the petitioners in this case. This copy was obtained from my law firm's computer system.

4. Attached hereto is a true and correct copy of the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief filed on June 23, 2022 in *City of Rancho Palos Verdes, et al., v. Bonta,* Los Angeles Superior Court Case No. 22STCP02369. My law firm

represents the petitioners in this case. This copy was obtained from my law firm's computer system.

Executed on this 19th day of April 2023, at Marina del Rey, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



June S. Ailin

CERTIFICATE OF WORD COUNT

[Cal. Rules of Court, Rule 8.204(c)(1)]

I certify pursuant to Rule 8.204(c) of the California Rules of Court, the attached Motion for Judicial Notice was produced on a computer and contains 723 words, excluding cover pages, tables of contents and authorities, and signature lines, as counted by the Microsoft Word for Office 365 word-processing program used to generate this brief.



June S. Ailin

EXHIBIT 1

of that code.

SEC. 3. Notwithstanding Section 2231.5 of the Revenue and Taxation Code, this act does not contain a repealer, as required by that section; therefore, the provisions of this act shall remain in effect unless and until they are amended or repealed by a later enacted act.

CHAPTER 1440

An act to amend Section 65852.1 of, and to add Section 65852.2 to, the Government Code, and to amend Section 21080 of the Public Resources Code, relating to housing.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. (a) The Legislature finds and declares that there is an tremendous unmet need for new housing to shelter California's population. The unmet housing needs will be further aggravated by the severe cutbacks in federal housing programs.

(b) The Legislature finds and declares that California's existing housing resources are vastly underutilized due in large part to the changes in social patterns. The improved utilization of this state's existing housing resources offers an innovative and cost-effective solution to California's housing crisis.

(c) The Legislature finds and declares that the state has a role in increasing the utilization of California's housing resources and in reducing the barriers to the provision of affordable housing.

(d) The Legislature finds and declares that there are many benefits associated with the creation of second-family residential units on existing single-family lots, which include:

(1) Providing a cost-effective means of serving development through the use of existing infrastructures, as contrasted to requiring the construction of new costly infrastructures to serve development in undeveloped areas.

(2) Providing relatively affordable housing for low- and moderate-income households without public subsidy.

(3) Providing a means for purchasers of new or existing homes, or both, to meet payments on high interest loans.

(4) Providing security for homeowners who fear both criminal intrusion and personal accidents while alone.

SEC. 2. Section 65852.2 is added to the Government Code, to read:

65852.2. (a) Any city, including a chartered city, county, or city and county, may by ordinance provide for the creation of second units in single-family and multifamily residential zones consistent with the following provisions:

(1) Areas may be designated in the jurisdiction where second units are permitted.

(2) The designation of areas may be based on criteria, which may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(3) Standards may be imposed on second units which include, but are not limited to, parking, height, setback, lot coverage, architectural review, and maximum size of the unit.

(4) A city including a chartered city, county or city and county may, in its discretion, find that second units provided for do not exceed the allowable density for the lot upon which it is located, and find that second units are a residential use which is consistent with the existing general plan and zoning designation for the lot.

(5) The second units created shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(6) A city, including a chartered city, county, or city and county may establish a process for the issuance of a conditional use permit for second units.

(b) When a city, including a chartered city, county, or city and county, which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c), receives its first application on or after July 1, 1983, for a conditional use permit pursuant to this subdivision, the jurisdiction shall accept the application and approve or disapprove it pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding the provisions of Section 65901, each city, including a charter city, county, or city and county shall grant a special use or a conditional use permit for the creation of a second residential unit if it complies with the following:

(1) The unit is not intended for sale and may be rented.

(2) The lot is zoned for single family or multifamily use.

(3) The lot contains an existing single-family detached unit.

(4) The second unit is attached to the existing residence and is located within the living area of the existing dwelling.

(5) Whenever an increase in floor area is involved, it shall not exceed 10 percent of the existing living area.

(6) Any construction shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(7) Local building code requirements which apply to additions to existing single-family dwellings, as appropriate.

(8) Approval by the local health officer where a private sewage disposal system is being used, if required.

As used in this subdivision, "living area" means the interior inhabitable area of a dwelling unit including basements and attics and shall not include a garage or any accessory structure.

No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

This subdivision establishes the maximum standards that cities, including charter cities, counties, and cities and counties shall use to evaluate proposed second residential units on lots zoned for residential use which contain an existing single-family detached unit. No additional standards, other than those provided in this section, shall be utilized or imposed, unless there is a requirement that an applicant for a permit issued pursuant to this subdivision shall be an owner-occupant.

This section shall not be construed to limit the authority of cities, counties, and cities and counties which adopt less restrictive requirements for the creation of second residential units.

No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement the provisions of this subdivision. Any city, county, or city and county may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second residential units if these provisions are consistent with the limitations of this subdivision.

A second residential unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No city, including a charter city, county, or city and county shall adopt an ordinance which totally precludes second units within single-family and multifamily zoned areas unless the ordinance contains findings acknowledging that such action may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting such an ordinance.

(d) As used in the section, a "second unit" is either a detached or attached dwelling unit which provides complete, independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel or parcels as the primary unit is situated.

(e) This section shall become operative on July 1, 1983.

(f) Jurisdictions which adopt ordinances pursuant to subdivision (a) or (c) shall submit a copy of such ordinances to the Department of Housing and Community Development within 60 days. The department shall submit a report to the Legislature, which shall transmit the report to the appropriate committees of the Legislature by January 1, 1984. The report shall evaluate the implementation of this section by local governments and suggest any appropriate legislative changes.

SEC. 4. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps (except where the project is exempt from the preparation of an environmental impact report pursuant to Section 21166).

(b) This division shall not apply to the following:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report or negative declaration or other document, or documents, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located; provided that the environmental impact report, negative declaration or other document, or documents, shall include the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares or other charges by public agencies which the public agency finds are for the purpose of (1) meeting operating expenses, including employee wage rates and fringe benefits, (2) purchasing or leasing supplies, equipment or materials,

(3) meeting financial reserve needs and requirements, (4) obtaining funds for capital projects, necessary to maintain service within existing service areas, or (5) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) Actions taken prior to January 1, 1987, by a public agency (1) to implement the transition from the property taxation system in effect prior to June 1, 1978, to the system provided for by Article XIII A of the California Constitution or (2) to respond to a reduction in federal funds. Those actions shall be limited to projects defined in subdivision (a) or (b) of Section 21065 which initiate or increase fees, rates, or charges charged for any existing public service, program, or activity; reduce or eliminate the availability of an existing public service, program, or activity; close publicly owned or operated facilities; or reduce or eliminate the availability of an existing publicly owned transit service, program, or activity.

(10) All classes of projects designated pursuant to Section 21084.

(11) A project for the institution or increase of passenger or commuter service on rail lines already in use, including the modernization of existing stations and parking facilities.

(12) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(13) Facility extensions not to exceed four miles in length which are required for transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(14) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(15) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in the State of California are subject to this division.

(16) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect in the plan or other written documentation required by Section 21080.5 is subject to this division.

(17) The creation of a second residential unit pursuant to Section 65852.2 of the Government Code.

(c) If a lead agency determines that a proposed project, not otherwise exempt from the provisions of this division, does not have a significant effect on the environment, the lead agency shall adopt

a negative declaration to that effect.

SEC. 5. No appropriation is made and no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution or Section 2231 or 2234 of the Revenue and Taxation Code because the 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.

CHAPTER 1441

An act to amend Section 51350 of the Health and Safety Code, relating to housing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1982. Filed with Secretary of State September 27, 1982.]

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

SECTION 1. Section 51350 of the Health and Safety Code is amended to read:

51350. (a) The agency may from time to time, after action of the Housing Bond Credit Committee as provided in Section 51360, issue its bonds in such principal amount as the agency shall determine to be necessary to provide sufficient funds for financing housing developments and other residential structures and for the payment of interest on bonds of the agency, establishment of reserves to secure such bonds, and other expenditures of the agency incident to, and necessary or convenient to, issuance of such bonds.

(b) Sale of the bonds of the agency shall be coordinated by the State Treasurer. To obtain a date for the sale of bonds, the agency shall inform the State Treasurer of the amount of the proposed issue. Upon such notification, the State Treasurer shall provide three 10-day periods, within the 90 days next following, when the bonds can be sold. The agency may choose any date during the suggested periods or any other date to which the agency and the State Treasurer have mutually agreed. The State Treasurer shall sell the bonds on the date chosen according to terms approved by the agency.

The Housing Bond Credit Committee shall exercise its powers with due regard for the right of the holders of bonds of the agency at any time outstanding, and nothing in, or done pursuant to, this section shall in any way limit, restrict, or alter the obligation or powers of the agency or any member, officer, or representative of the agency or the State Treasurer to carry out and perform in every detail each and every convenant, agreement, or contract at any time made or entered into on behalf of the agency with respect to its bonds or its benefits, or the security of the holders thereof.

EXHIBIT 2

Electronically FILED by Superior Court of California, County of Los Angeles on 03/29/2022 03:48 PM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Perez,Deputy Clerk
22STCP01143

SUM-100

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

[Exempt From Filing Fee
Government Code § 6103]

NOTICE TO DEFENDANTS/RESPONDENTS:
(AVISO AL DEMANDADO):
ROB BONTA, in his official capacity as California Attorney-General, STATE OF CALIFORNIA; and DOES 1 through 50, inclusive

YOU ARE BEING SUED BY PLAINTIFFS/PETITIONERS
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
CITY OF REDONDO BEACH, a California charter city; CITY OF CARSON, a California charter city; CITY OF TORRANCE, a California charter city; CITY OF WHITTIER, a California charter city

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (*www.lawhelpcalifornia.org*), the California Courts Online Self-Help Center (*www.courtinfo.ca.gov/selfhelp*), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of $10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! *Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.*

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (*www.sucorte.ca.gov*), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (*www.lawhelpcalifornia.org*), en el Centro de Ayuda de las Cortes de California, (*www.sucorte.ca.gov*) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de $10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.*

The name and address of the court is:
(El nombre y dirección de la corte es):
LOS ANGELES SUPERIOR COURT - UNLIMITED CENTRAL
111 N. Hill St.
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):
22STCP01143

Sherri R. Carter Executive Officer / Clerk of Court

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
ALESHIRE & WYNDER, LLP Sunny K. Soltani SB# 209774 Pam K. Lee SB# 246369
18881 Von Karman Ave., Ste. 1700
Irvine, CA. 92612 Tel (949) 223-1170 / Facsimile (949) 223-1180

DATE: *(Fecha)* 03/29/2022
Clerk, by *(Secretario)* R. Perez, Deputy *(Adjunto)*

(For proof of service of this summons, use Proof of Service of Summons *(form POS-010).)*
(Para prueba de entrega de esta citatión use el formulario Proof of Service of Summons, *(POS-010)).*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify):*
3. ☐ on behalf of *(specify):*
   under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
   ☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
   ☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
   ☐ other *(specify):*
4. ☐ by personal delivery on *(date):*

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 [Rev. July 1, 2009]

American LegalNet, Inc.
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Code of Civil Procedure §§ 412.20, 465
www.courtinfo.ca.gov

Electronically FILED by Superior Court of California, County of Los Angeles on 03/29/2022 03:48 PM Sherri R. Carter, Executive Officer/Clerk of Court, by R. Perez,Deputy Clerk
22STCP01143

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mary Strobel

[Exempt From Filing Fee Government Code § 6103]

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

CITY OF REDONDO BEACH, a California charter city; CITY OF CARSON, a California charter city; CITY OF TORRANCE, a California charter city; CITY OF WHITTIER, a California charter city

Petitioners/Plaintiffs,

v.

ROB BONTA, in his official capacity as California Attorney-General, STATE OF CALIFORNIA; and DOES 1 through 50, inclusive,

Respondents/Defendants.

Case No. 22STCP01143

VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

(Civ. Proc. Code, §§ 526, 1060, 1085)

This Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief ("Petition") is brought by Petitioners/Plaintiffs City of Redondo Beach, City of Carson, City of Torrance, and City of Whittier and directed to Respondents/Defendants Rob Bonta, in his official capacity as California Attorney-General, and the State of California.

INTRODUCTION

1. Petitioners/Plaintiffs City of Redondo Beach, City of Carson, City of Torrance, and City of Whittier bring this action to uphold the California Constitution and prevent the State of California from usurping a charter city's land use authority, which is a uniquely municipal affair. As the California Supreme Court has opined: "***Charter cities are specifically authorized by our state Constitution to govern themselves, free of state legislative intrusion, as to those matters deemed municipal affairs***." (*State Building & Construction Trades Council of California, AFL-CIO v. City of Vista* (2012) 54 Cal.4th 547, 555 ("*City of Vista*").) As to municipal affairs, "charter cities are 'supreme and beyond the reach of legislative enactment.'" (*California Fed. Savings & Loan Ass'n v. City of Los Angeles* (1991) 54 Cal.3d 1, 12 ("*Cal Fed Savings"*).)

2. It is undisputed that planning and zoning laws are matters of municipal affairs. The constitutional right of municipalities to zone single-family residential districts and the sanctioning principle upon which that right is founded has been well settled law for almost 100 years. (*Miller v. Bd. of Public Works of City of Los Angeles* (1925) 195 Cal. 477, 486.)[1] Likewise, the right of housing development approvals has historically been a municipal affair.

3. Thus, any legislative enactment to curtail a matter of municipal affair must be a subject of statewide concern, and such enactment must be "'reasonably related to…resolution' of that concern" and "'narrowly tailored' to avoid unnecessary interference in local governance." (*City of Vista, supra,* 54 Cal.4th at 556.)

4. In enacting Senate Bill 9 ("SB 9") in 2021, the State of California eviscerated a city's local control over land use decisions and a community-tailored zoning process. SB 9 provides a

[1] The California Supreme Court went even further to add: "The establishment of single family residence districts offers inducements not only to the wealthy but to those of moderate means to own their own homes. … With ownership of one's home comes recognition of the individual's responsibility for his share in the safeguarding of the welfare of the community and increased pride in personal achievement which must come from personal participation in projects looking toward community betterment. [¶] It is needless to further analyze and enumerate all of the factors which make a single family home more desirable for the promotion and perpetuation of family life than an apartment, hotel, or flat. It will suffice to say that there is a sentiment practically universal, that this is so." (*Id.* at 493.)

ministerial approval process, without any discretionary review or hearings, for property owners to subdivide a residential parcel into two lots and to build up to two primary homes on each resulting lot. With the combination of SB 9 and/or previously adopted accessory dwelling unit ("ADU") laws, one single-family parcel may now have up to four homes, notwithstanding any city's general plan or local zoning laws prohibiting otherwise. In essence, SB 9 eliminates local authority to create single-family zoning districts and approve housing developments, a right that has existed for practically a century.

5. Through SB 9 the State has impinged upon local control in a manner that is not reasonably related to its stated State interest. SB 9 cites ensuring access to affordable housing as a matter of statewide concern that justifies its applicability to charter cities, but the bill does not require the newly created homes or the lots to have any affordability covenants or to be restricted to moderate- or lower-income households. Thus, in very urbanized areas where housing demand and prices are high, SB 9 housing developments could be sold or leased at market rate prices, which would do nothing to address housing affordability, and could exacerbate unaffordability by taking away potential affordable housing locations.

6. SB 9 also intended to allow the average single-family homeowner to split their lot and create duplexes and ADUs. Instead, developers and institutional investors with deep pockets are more likely to take advantage of SB 9. The new bill will raise land and home values, particularly in already very urbanized areas, making it harder for first-time homebuyers to get their foothold on the American Dream and further alienating lower-income households. Additionally, some advocacy groups claim that developers are likely to target communities of color, in areas where land is relatively cheaper, and demolish houses to build high-cost rentals that would limit the ability of minorities to build wealth, exacerbating inequalities and promoting gentrification.

7. In addition, the State has impinged upon local control in a manner that is ***not narrowly tailored*** to avoid unnecessary interference in local governance. With the addition of up to four times as many homes in an existing neighborhood under SB 9, the threat of adverse impacts is imminent. Although SB 9 allows a city to deny a project that would have specific and significant adverse impacts, such impacts are limited only to objective public health or safety concerns.

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However, there are many environmental and community concerns that are not considered "objective public health or safety concerns" under SB 9. For example, local ordinances – such as those that preserve trees or views or create bike paths or open space – address important climate change, greenhouse gases, and community concerns but do not rise to the level of objective public health or safety concerns as contemplated under SB 9.

8. Even if an adverse impact is considered an "objective public health or safety concern," one housing project built under SB 9 may not have a significant enough impact on an individual basis, such that it could be denied in accordance with the bill. Nonetheless, the cumulative impacts of several housing projects within a single neighborhood on public health or safety could still be significant. Specifically, the addition of up to four times as many families in existing neighborhoods will undoubtedly impact schools with increased class sizes, exacerbate traffic congestion, and create parking deficiencies. There will also be increased need for water and sewer capacity, use of utilities, maintenance and replacement of physical infrastructure, and demand for emergency access and response. Petitioners cannot address these cumulative impacts under SB 9 on an individual basis for each housing project.

9. Petitioners recognize that housing, including housing affordability, are serious issues that must be addressed at both the State and local levels. In fact, Petitioners have been proactive in finding ways to provide more housing and affordable housing for residents. For example, the Cities of Redondo Beach and Torrance sponsor a Section 8 Housing Program and an Emergency Housing Vouchers Program, and the City of Redondo Beach is in process to adopt an inclusionary housing ordinance for affordable housing that mandates affordable housing be constructed for projects over 10 units. The City of Whittier too has an existing inclusionary housing ordinance for affordable housing for housing projects over 7 units. Also, the City of Carson is in the process of adopting a below market rate housing ordinance with an inclusionary housing component to increase affordable housing stock within its community. Over the past two decades, the City of Carson, through the Carson Housing Authority, assisted in the development of almost 1,000 affordable housing units, and over 900 housing units are currently under construction or approved within the community.

10. Petitioners are partners with the State and will continue to cooperate with the State to find comprehensive and creative solutions to the lack of housing and affordable housing, but this must be done in a way that addresses each community's unique needs and opportunities that provide solutions tailored for each community. SB 9, however, is overly broad and therefore ignores communities and their single-family residents and by impeding local and well-thought out responses to the lack of affordable housing.. The bill is short-sighted, counter-productive to the State's housing goals and objectives, and hinders the role of charter cities such as Petitioners in effectively and efficiently creating and promoting opportunities for affordable housing development.

11. Accordingly, this lawsuit is necessary to protect the rights of charter cities to maintain local land use and zoning control for the benefit of their communities without the State's intervention on a matter that may be of statewide concern but whose legislative enactments under SB 9 are not reasonably related to resolving those interests nor narrowly tailored to avoid interference with local government.

PARTIES

12. Petitioner/Plaintiff City of Redondo Beach ("Redondo Beach") is a charter city, duly organized under the Constitution and the laws of the State of California. Redondo Beach is the 43rd most dense city in the country with a population over 50,000, with a population density of 11,000 residents per square mile. As a result of such densities, Redondo Beach has 11 traffic intersections with level of service F, the worst measurement of traffic congestion, and similar parking challenges.

13. With respect to affordable housing, Redondo Beach sponsors two affordable housing programs: a Section 8 Housing Program and an Emergency Housing Vouchers Program. Redondo Beach also is in process to adopt an inclusionary housing ordinance that mandates affordable housing for lower income households be constructed for projects over 10 units.. Over the past eight years, Redondo Beach has financially assisted, constructed, rehabilitated, or preserved the affordability of 688 housing units.

14. Petitioner/Plaintiff City of Carson ("Carson") is a charter city, duly organized under the Constitution and the laws of the State of California. The City of Carson has a population density of nearly 5,000 people per square mile, while the State average is only 232.5 residents per square

mile. Over 75% of the City's population is comprised of minorities. The community is impacted by freight, port, rail, and automobile traffic congestion, as well as poor air quality and pollution due to oil and gas production and refinery uses.

15. With respect to affordable housing, Carson is in the process of adopting a below market rate housing ordinance with an inclusionary housing component to increase affordable housing stock within its community. Carson, through the Carson Housing Authority, has developed or assisted in the development of almost 1,000 affordable housing units in its community over the past two decades.

16. Petitioner/Plaintiff City of Torrance ("Torrance") is a charter city, duly organized under the Constitution and the laws of the State of California. The City of Torrance has a population density of 7,160 residents per square mile. Traffic and congestion on major thoroughfares and traffic safety are one of the biggest concerns of many residents, which is exacerbated by the high influx of daily workers and visitors into the City.

17. With respect to affordable housing, Torrance also sponsors a Section 8 Housing Program and an Emergency Housing Vouchers Program. Torrance has 659 affordable rental housing units in its community and is planning for an additional 2,467 affordable housing units in the next eight years.

18. Petitioner/Plaintiff City of Whittier ("Whittier") is a charter city, duly organized under the Constitution and the laws of the State of California. Whittier has a population density of 5,667 people per square mile. Approximately 75% of the City's population is comprised of minorities.

19. With respect to affordable housing, Whittier has implemented the Affordable Home Ownership Program and the Housing Rehabilitation Program, as well as being a participant in the federal HOME Program to assist low and very low income families secure affordable housing. The City further established a Housing Rights Center to support tenants and landlords regarding their rights and responsibilities on rental housing.

20. Redondo Beach, Carson, Torrance, and Whittier are collectively referred to herein as "Petitioners."

21. Respondent/Defendant Rob Bonta ("Bonta") is the California Attorney-General and is named herein at all times in his official capacity as such. Bonta, as the California Attorney-General, is the chief law officer of the State. The Attorney-General has the duty to see that the laws of the State are uniformly and adequately enforced.

22. Respondent/Defendant State of California ("State") is and at all times mentioned herein is a State of the United States of America. Lawsuits may be brought against the State under Article III, Section 5 of the California Constitution.

23. Bonta and the State are collectively referred to herein as "Respondent".

24. The true names and capacities, whether individual, corporate, or otherwise, of Respondent/Defendant DOES 1 through 50, inclusive, are unknown to Petitioners at this time, and such Respondents/Defendants are, therefore, sued by fictitious names. Petitioners will seek leave of court to amend this Petition to reflect the true names and capacities of these fictitiously named Respondents/Defendants when they have been ascertained. Petitioners are informed and believe, and based thereon allege, that each of the Respondents/Defendants named herein as DOES 1 through 50, inclusive, is legally responsible in some manner for the actions challenged herein and, therefore, should be bound by the relief sought herein.

JURISDICTION AND VENUE

25. This Court has original jurisdiction over this matter pursuant to Article VI, Section 10 of the California Constitution, and Section 1085 of the Code of Civil Procedure.

26. Venue is proper in this Court pursuant to Code of Civil Procedure Section 401, subdivision (l), because the Attorney-General maintains an office in Los Angeles County.

FACTUAL ALLEGATIONS

California Constitution and Existing Statutory Law

27. Article XI, Section 5, subdivision (a) of the California Constitution provides: "It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter,

and with respect to municipal affairs shall supersede all laws inconsistent therewith."

SB 9

28. SB 9 was signed into law by Governor Gavin Newsom, filed with the Secretary of State on September 16, 2021, and became effective on January 1, 2022. Attached as Exhibit A is a true and correct copy of SB 9, as chaptered and enrolled.

29. SB 9 added Government Code Sections 65852.21 and 66411.7 and amended Government Code Section 66452.6.

SB 9: Development of Two Residences on One Lot

30. Government Code Section 65852.21, subdivision (a) provides that "no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing," if the housing project meets certain requirements.

31. Government Code Section 65852.21, subdivision (b) provides that only objective zoning, subdivision, and design review standards may be imposed upon any housing unit created under SB 9, and such standards cannot preclude the creation of two units that are at least 800 square feet each.

32. Government Code Section 65852.21, subdivision (c) allows a local agency to require up to one off-street parking space per unit, but no parking shall be imposed if the parcel is located within one-half mile walking distance of a high-quality transit corridor or a major transit stop, or if there is a car share vehicle located within one block of the parcel.

33. Government Code Section 65852.21, subdivision (d) allows a local agency to deny a housing project under SB 9 only if it would have a specific, adverse impact, as defined in Government Code Section 65589.5 subdivision (d) paragraph (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. Government Code Section 65589.5 subdivision (d) paragraph (2) defines "specific, adverse impact" as "a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete."

34. Government Code Section 65852.21, subdivision (k) further provides that a local agency shall not be required to hold public hearings for coastal development permit applications under the California Coastal Act of 1976 for housing developments under SB 9.

35. Government Code Section 65852.21, subdivision (e), prohibits short-term rentals of 30 days or less, but there are no other occupancy restrictions under Section 65852.21.

SB 9: Lot Splits

36. Government Code Section 66411.7, subdivision (a) requires a local agency to ministerially approve, without discretionary review or a hearing, the splitting of one single-family residential parcel into two lots, provided that each lot is located in an urbanized area (as designated by the US Census Bureau), no smaller than 40% of the original parcel, and at least 1,200 square feet, among other requirements.

37. Government Code Section 66411.7, subdivision (c) provides that only objective zoning, subdivision, and design review standards may be imposed upon any lot split, and such standards cannot preclude the creation of two units that are at least 800 square feet each.

38. Government Code Section 66411.7, subdivision (d) allows a local agency to deny a proposed lot split under SB 9 only if it would have a specific, adverse impact, as defined in Government Code Section 65589.5 subdivision (d) paragraph (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.

39. Government Code Section 666411.7, subdivision (o) further provides that a local agency shall not be required to hold public hearings for coastal development permit applications under the California Coastal Act of 1976 for lot splits under SB 9.

40. Government Code Section 666411.7, subdivision (g) requires the owner to sign an affidavit of their intent to principally occupy one of the lots for at least three years after the lot split is approved, and subdivision (h) prohibits short-term rentals of 30 days or less. There are no other occupancy restrictions under Government Code Section 66411.7.

SB 9: Matter of Statewide Concern

41. In enacting SB 9, the State Legislature specifically found and declared that "ensuring

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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." (Emphasis added.) Accordingly, SB 9 applies to both general law and charter cities.

42. However, nowhere in the statutory text of SB 9 is there a requirement that any housing or lot split created under SB 9 be available at an affordable housing cost, as defined in State law, or restricted to moderate-income or lower-income households, as defined in State law, thereby allowing the housing units and the lots to be sold or leased at market rates.

SB 9: Procedural History

43. Prior to the introduction of SB 9 to the State Senate on December 7, 2020, the bill existed in virtually identical form in the prior year's (2019/2020) legislative session as Senate Bill (SB) 1120. Petitioners Redondo Beach and Torrance provided comment letters on SB 1120. The thrust of their concern was that SB 1120 unconstitutionally preempted a charter city's regulation of zoning and housing regulations that address adverse impacts of an overly dense and crowded community and improperly planned housing and infrastructure. Attached as Exhibit B is a true and correct copy of the City of Redondo Beach comment letter dated June 7, 2020 to the State Senate and Assembly Members. Attached as Exhibit C is a true and correct copy of the City of Torrance comment letter dated June 18, 2020 to the Senator Toni G. Atkins.

44. Petitioners are informed and believe that SB 1120 failed to be adopted because it was not submitted for final voting prior to a legislative floor deadline.

45. After SB 9 was introduced to the State Legislature on December 7, 2020, Petitioners provided comment letters on SB 9 for similar reasons. Attached as Exhibit D-1 is a true and correct copy of the South Bay Cities Council of Governments comment letter dated June 18, 2021 to the Honorable David Chiu, Chair of the Assembly Committee on Housing and Community Development. Attached as Exhibit D-2 is a true and correct copy of the City of Whittier comment letter dated June 8, 2021 to the Honorable Cecilia Aguilar-Curry, Chair of the Assembly Committee on Local Government.

46. Throughout the legislative process prior to SB 9's passage, Petitioners and others commented on SB 9's removal of local land use and zoning control from cities and its replacement

with a one-size-fits-all approach throughout the State, notwithstanding each community's varying needs and unique natural and physical environment. Attached as Exhibit E is a true and correct copy of SB 9 Unfinished Business Analysis of the Senate Rules Committee dated August 28, 2021.

47. SB 9 contains no severability clause.

FIRST CAUSE OF ACTION

(Petition for Writ of Mandate – Code of Civil Procedure § 1085)

48. Petitioners hereby re-allege paragraphs 1 through 47, inclusive, and incorporate them herein by reference as if fully set forth below.

49. As set forth in this Petition, SB 9 violates the California Constitution. Therefore, Petitioners seek a peremptory writ of mandate under Code of Civil Procedure section 1085, compelling Respondent to cease enforcement of SB 9.

50. Respondents have a clear, present, and ministerial duty to administer the laws of the State of California, such as the Government Code provisions adopted or amended under SB 9, without violating the provisions of the California Constitution. Respondent's adoption and enactment of SB 9 is clearly unconstitutional for the reasons set forth below.

51. Cities throughout California have already established residential land use and zoning regulations with respect to the densities, types, locations, and standards for housing developments, and such regulations have been found to be municipal affairs, as guaranteed under Article XI, Section 5 of the California Constitution. However, the enactment of SB 9 to allow for multiple homes on property that has been zoned by a city for only one single-family home and to permit the splitting of a single-family residentially zoned parcel into two lots, all subject to ministerial review and approval, usurps a charter city's authority over its own municipal affairs.

52. SB 9 specifically cited to and found that "ensuring access to affordable housing" – rather than just any housing – is a matter of statewide concern and not a municipal affair. However, SB 9 is not reasonably related to this stated goal.

53. First, nowhere in the text of SB 9 is there a provision to improve or increase the State's or a city's affordable housing stock. SB 9 contains no restriction or limitation of any new housing or lot split created under SB 9 to be available at an affordable housing cost, as that is defined

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in State law, or to be sold or leased to moderate- or lower-income households, as those terms are defined in State law. Any and all new housing and lot splits under SB 9 can be sold or leased at market rates. Considering the already high cost of land and housing units, as well as the high costs of labor and materials, within urban areas of the State, it is unlikely that most of the new housing created under SB 9 will be financially affordable to moderate- or lower-income households. Rather, SB 9 will exacerbate unaffordability by taking away potential affordable housing locations. In some dense urban areas where Petitioners are located, residential parcels valued at $1.5 million may result in a lot split with new housing units valued at $1.0 to $1.2 million each. With a surplus of high market rate units and not enough affordable homes, SB 9 does nothing to alleviate the housing affordability issue and may, in fact, further alienate lower income households and threaten those looking to achieve the American Dream.

54. The State knows how to write a law that will meaningfully and truly impact the lack of affordable housing. SB 9 is not such a law. The only mention of affordability, other than in its purported justification for applying it to charter cities, is that the developments and lot splits authorized by SB 9 not require demolition or alteration of housing that was already otherwise restricted as affordable. Not creating more harm does not come close to meeting the standard of being reasonably related to the stated goal of increasing access to affordable housing. In comparison, AB 83 and AB 140, for example, establishing Project Homekey Part 1 and 2 are replete with restrictions that will actually create affordable housing. Although those laws also provide exemptions from city planning and zoning laws, the Plaintiffs did not challenge them as being unconstitutional. In fact, Redondo Beach recently partnered with the County of Los Angeles and a developer of low income housing to obtain $7.3 million to acquire and rehabilitate a former hotel in Redondo Beach, providing permanent supportive housing to chronically homeless households even though the location is not zoned for residential under the Redondo Beach Municipal Code. This is because those laws have sufficient restrictions to ensure the housing will actually be affordable and not market rate. SB 9 has no such restrictions and therefore is not reasonably related to the specified state interest due to its failure to address the purported concern of lack of affordable housing.

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55. Even if SB 9 were reasonably related to its stated goal it would still be unconstitutional because it is not narrowly tailored to avoid unnecessary interference in local governance, for several reasons. First, SB 9 does not allow a city to adequately address public health or safety concerns of the cumulative impacts of multiple SB 9 housing projects in a neighborhood or community. Although SB 9 allows a city to deny a housing project based on objective public health or safety concerns, the public health or safety impact must be significant. Although a single SB 9 housing project may not have a significant public health or safety impact, the ***cumulative impacts of several projects within a single neighborhood*** on public health or safety could be significant.

56. For example, SB 9 allows local ordinances to require up to one space of off-street parking per unit, but prohibits the application of a parking requirement when a housing project is within one-half mile walking distance of a high-quality transit corridor or major transit stop or within one block of a car share vehicle. Since SB 9 allows up to four houses on one parcel (with a lot split), a single SB 9 housing project could create parking demand for at least four to eight vehicles while supplying none, resulting in adverse parking and traffic issues, and hampering fire or emergency access where needed, particularly in neighborhoods where streets are narrow.

57. Likewise, one SB 9 housing project would not likely affect an existing water line or sewer capacity, but a 15% increase in housing projects could overwhelm the water or sewer system built to the capacity of an existing, non-growing neighborhood. None of these concerns could be addressed under SB 9 because the impact of one housing project would not meet the definition of a "significant impact" on an individual basis, and SB 9 does not allow a city to address the cumulative impacts of such housing projects.

58. Charter cities such as Petitioners have enacted ordinances to address their localities' specific concerns regarding traffic, parking, community character, and infrastructure, many of which were designed decades ago for a suburban density. Moreover, land use decisions oftentimes are required to take into account school capacity, financial sustainability, park and open space, air pollution, physical infrastructure and utility needs, and access to emergency services. None of these can be considered under SB 9 in denying a project unless they are significant enough on an

individual project basis. Therefore, SB 9 is overbroad and not narrowly tailored due to its intrusion in the city's authority to regulate for the public health, safety, and welfare of its community.

59. Second, SB 9 disrupts a city's housing element and the State's housing laws (Government Code Section 65580 *et seq.*) by eliminating single-family zoning, which make up two-thirds of all residences in California. By allowing multiple houses on one lot without having to re-zone such lots from single-family to multi-family uses, a city's zoning districts and thereby its housing element will become outdated and inaccurate by failing to adequately account for certain population increases, housing supply and demand, infrastructure needs, parks, emergency services, and other related service levels. As a result, cities will not be able to accurately plan for future housing, as contemplated and required under the Government Code. This is contrary to the purposes of SB 9 and significantly reduces the ability for cities to adopt complete and accurate housing elements in the future.

60. Moreover, uneven development of housing density will put further strain on a city's infrastructure, public utilities, and local services without adequate planning and control to address the resulting impacts. Increasing by right the densities, population, and housing units by up to four times within existing neighborhoods, without allowing a city to review the potential adverse impacts of such developments on traffic, noise, greenhouse gases, water and sewer systems, and other concerns within its community on a cumulative level, is unsustainable and potentially disastrous. As a result, SB 9 is overbroad and not narrowly tailored to avoid unnecessary interference in local governance over its housing elements and local planning and zoning laws.

61. Third, SB 9 excludes certain areas subject to the California Coastal Act, which may leave large swaths of coastal cities such as Petitioners exempt from SB 9, while other portions of the same cities are not exempt, thereby disproportionately gentrifying parts of a community and not affirmatively furthering fair housing. Petitioners and other cities are already working to create more opportunities for affordable and fair housing, but certain exemptions under SB 9 hinder these goals.

62. Fourth, SB 9 removes any public engagement and review of land use decisions that affect neighboring homeowners by requiring a ministerial approval process. Particularly when a housing project is subject to the California Coastal Act where public hearings would normally be

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required, ministerial review of a housing development jeopardizes the ability for the applicant, residents, other local agencies, and stakeholders to voice legitimate public health, safety, and other community concerns that may be resolved through the city's local authority over land use and zoning decisions.

63. SB 9 is non-democratic in that it prohibits any due process for the affected housing applicant or neighbors and closes off any public accountability of public officials for their actions in approving SB 9 housing projects. Again, SB 9 is overbroad and not narrowly tailored to avoid unnecessary interference in local governance and accountability in land use and zoning decisions and housing development approvals.

64. Petitioners are beneficially interested in Respondent's duties to uphold the California Constitution and not to enforce any law, statute, or regulation that is in violation thereof. The enactment of SB 9 constitutes an abuse of discretion and is unconstitutional.

65. Petitioners have no adequate remedy at law to redress the constitutional and statutory violations described herein other than through a petition for writ of mandate.

66. Therefore, Petitioners request and pray that a writ of mandate be issued by this Court overturning or invalidating SB 9, due to its unconstitutional violations as set forth herein.

67. It is important to note that overturning or invalidating SB 9 will not eliminate the ability of the State to address the lack of housing and housing affordability issues. The State will continue to have a plethora of recently enacted housing legislation to tackle the housing crisis, including SB 330, SB 35, AB 447, AB 634, and AB 787, as well a slew of existing tools localities can use to create housing and improve housing affordability.

SECOND CAUSE OF ACTION

(Declaratory/Injunctive Relief – Code of Civ. Proc. §§ 526, 1060)

68. Petitioners hereby re-allege paragraphs 1 through 67, inclusive, and incorporate them herein by reference as if fully set forth below.

69. Petitioners and Respondent are each interested in the legal validity of SB 9, and there is an actual and present controversy between the parties. Petitioners seek to determine that the enactment of SB 9 and the various provisions of the Government Code contained therein,

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unconstitutionally violate a charter city's authority over matters concerning municipal affairs and is neither reasonably related to resolution of the specified statewide interest of access to affordable housing nor narrowly tailored to avoid unnecessary interference in local governance. Respondent is obliged by statute to implement and enforce SB 9.

70. A judicial declaration is appropriate and necessary at this time under the circumstances to resolve the Parties' controversy and determine the constitutionality of SB 9, whether Petitioners and other charter cities are required to comply with SB 9, and whether Respondent can properly enforce the bill.

71. Petitioners are presently and continuously injured by Respondent's enactment of SB 9, insofar as they violate Petitioner's rights under the California Constitution. Petitioners have no plain, speedy, and adequate remedy at law, and damages are indeterminate or unascertainable, and in any event, would not fully redress any harm suffered by Petitioners. Accordingly, the Court must enjoin Respondent from enforcing the provisions of SB 9.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:

1. For a peremptory writ of mandate invalidating SB 9 and directing Respondent to cease implementation and enforcement of SB 9, and all provisions that violate the State Constitution and statutory law;

2. For a declaration that SB 9 is unconstitutional, and that Respondent be enjoined from implementing or enforcing SB 9;

3. For Petitioners' costs of suit;

4. For an award of attorneys' fees pursuant to Code of Civil Procedure section 1021.5 or other applicable law; and

5. For such other and further relief as the Court may deem just and proper.

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DATED: March 29, 2022

ALESHIRE & WYNDER, LLP

By: _____

SUNNY K. SOLTANI
Attorneys for Petitioners CITY OF REDONDO BEACH, CITY OF CARSON, CITY OF TORRANCE, and CITY OF WHITTIER

VERIFIED PURSUANT TO CODE OF CIVIL PROCEDURE § 446

EXHIBIT A

STATE OF CALIFORNIA
LEGISLATIVE COUNSEL BUREAU
AUTHENTICATED
ELECTRONIC LEGAL MATERIAL

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

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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.

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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.

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(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

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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:

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(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

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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

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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

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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.

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(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.

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(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

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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 B

Bill Brand
Mayor

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July 7, 2020

RE: CITY OF REDONDO BEACH **OPPOSES** HOUSING BILLS THAT PREEMPT LOCAL REGULATORY CONTROLS

Dear State Senate and Assembly Members:

There are several bills that have been introduced in the Senate and Assembly this year related to housing and affordable housing. Although the City of Redondo Beach understands the intent to address the shortage of housing and affordable housing in the State of California, there are concerns with the potential consequences of many of these bills. The list of applicable bills is as follows:

SB 902	Planning and zoning: housing development: density
SB 995	Environmental quality: Jobs and Economic Improvement Through Environmental Leadership Act of 2011: housing projects
SB 1085	Density Bonus Law: qualifications for incentives or concessions: student housing for lower income students: moderate-income persons and families: local government constraints
SB 1120	Subdivisions: tentative maps
SB 1299	Housing development: incentives: rezoning of idle retail sites
AB 725	General Plans: housing element: moderate-income and above moderate-income housing: suburban and metropolitan jurisdictions
AB 1279	Planning and zoning: housing development: high-opportunity areas
AB 2345	Planning and zoning: density bonuses: annual report: affordable housing
AB 3040	Local planning: regional housing needs assessment
AB 3107	Planning and zoning: general plan: housing development

<u>Local Controls and Planning</u>
Existing State law leaves zoning decisions exclusively to local governments-this is a major part of the home rule doctrine. Several of the housing bills proposed in the Senate and Assembly preempt local regulation for housing.

Our City is currently updating its General Plan to address many local housing related concerns. Since spring 2017, a 27-member citizens General Plan Advisory Committee has conducted 21 meetings, with 6 more scheduled, many where the focus has been on housing in Redondo Beach. The intent is to ensure that a broad range of housing

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types and densities are available. However, under numerous proposed housing bills this year, these robust planning efforts specific to our City would not be taken into consideration.

Redondo Beach provides for a broad range of housing types and densities. The City has also taken action to zone for higher densities around high quality transit nodes and to some extent along transit corridors. The City's certified Housing Element identifies specific sites in strategic locations and includes specific programs for ensuring housing goals as required are achieved. Every area identified in the Housing Element has distinct challenges that require different approaches.

Redondo Beach is a perfect example of a medium size coastal city striving to meet and address the housing needs of Southern California. We have every level and type of housing; singles, 1 bedroom, 2 bedrooms, 3 bedrooms, multi-family housing, single-family housing, accessory dwelling units, and multi-million-dollar coastal homes. Fifty percent of the housing units in the community is rental. We also have a Housing Authority with over 500 vouchers issued for Section 8 housing. We have numerous senior living complexes in all areas of town.

Like many communities in California, Redondo Beach is largely 'built-out' with worsening traffic, impacted schools, and water shortages. However, Redondo Beach's population continues to grow, along with average household size and the number of households. We have been averaging an additional 60 units per year for the last 15 years.

Redondo Beach's population density is 11,000 residents per square mile. Our city is one of the most densely populated areas in California. Demographia.com rated Redondo Beach as 43rd in population density for U.S. Cities over 50,000 people after the 2000 census. With this population density, the City as a result has 11 Level of Service 'F' intersections and similar parking challenges. Nonetheless, the City of Redondo Beach is producing a wide variety of housing after carefully considering the suitability and impacts of each housing project.

Many of the outlying cities in the LA area such as ours have a severe housing/jobs imbalance where over 90% of the residents leave their town in the morning to go to work (recognizing that during the LA County Safer at Home Order addressing the public health emergency related to COVID-19 and the curfews implemented recently this has been temporarily suspended but will return once orders are lifted). This creates huge impacts to our transportation sectors in one direction in the morning, to only reverse that impact during the evening commute. What these areas need is more job creating business centers to reverse some of that flow, not more housing that will only worsen the problem.

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Yet, again, many of the proposed housing and affordable housing bills would exempt projects from local controls to appropriately plan, regulate, and provide infrastructure for housing in our community based on the community's needs and circumstances.

One Size Does Not Fit All

Despite the city's contemporary land-use planning policies and zoning designations, the proposed legislation would replace our strategically planned , locally appropriate areas of housing intensification with a blanket policy. This one size fits all approach to local land use regulation would have significant adverse impacts on our established community and its character, many bills having significant implications regarding traffic, parking, and other infrastructure that was designed decades ago for a suburban density.

Land use decisions by communities and local officials are complex and take into account many different issues such as school capacity, financial sustainability, available park space, traffic, air pollution, water needs, sewer capacity, parking, affordability, street maintenance, commercial needs, industrial needs, access to emergency services, etc.

A one size fits all approach dictated from the State will be a disaster for many communities by exacerbating impacts that will also have consequences with State-wide interest. Water needs will increase and student/teacher ratios will deteriorate just to name two. Legislation that creates even bigger problems with State-wide interests will demand more rules and regulations to fix the problems they create.

State legislation should not interfere with complex decisions best handled at the local level. Local land-use decisions should be left to local communities who must manage and maintain the towns they create. To address this concern, on July 7, 2020 the Redondo Beach City Council received a report and authorized this response to the housing bills listed above that propose significant detrimental impacts on local control.

In conclusion, although it is important to make housing development a priority in today's climate, housing development regulations and approvals should be left to the local agencies that are best equipped to evaluate the impacts of projects, and can require mitigations to protect the health and safety of the residents they serve. We oppose home rule preemption.

Sincerely,

William Brand

CC: Senator Benjamin Allen, 26th State Senate District
Assembly Member Al Muratsuchi, 66th Assembly District
Michael J. Arnold, Michael J. Arnold & Associates
City Council Members, City of Redondo Beach

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EXHIBIT C

CITY OF TORRANCE

PATRICK J. FUREY
MAYOR

CITY COUNCIL MEMBERS
HEIDI ANN ASHCRAFT
GEORGE CHEN
TIM GOODRICH
MIKE GRIFFITHS
SHARON KALANI
AURELIO MATTUCCI

June 18, 2020

Senator Toni G Atkins
Senator President Pro Tempo re
Capitol Office
State Capitol, Room 20S
Sacramento, CA 95814

RE: **SB 1120 (Atkins) Subdivisions: tentativ e maps**
Notice of Opposition

Dear Senator Atkins,

The City of Torrance is **opposed** to SB 1120, which would require a proposed housing development containing two (2) residential units to be considered ministerially and would be without discretionary review or hearing in zones where allowable uses are limited to si ngle-family, residential development, if the proposed housing development meets certain requirement s.

SB 1120 lets cities apply local ADU laws, to double its envisioned four units to eight luxury units per single-family lot, further spurring speculation and destabilizing homeownership in Cali fornia. At the same time, the bill requires just one parking space per home in most communities.

Specifically, the City of Torrance opposes the following provisions in SB 1120:

- Requires a housing development containing two units to be considered ministerially in single family zones if the development meets certain conditions.
- Requires a city or county to ministerially approve or deny a parcel map for an urban lot split that meets specified requirements, in addition to the requirements for eligible parcels that apply to both duplexes and urban iot splits.
- Prohibits a local agency from imposing regulations that require dedications of rights-of-way or the construction of reasonable offsite and onsite improvements for parcels created through an urban lot split.
- Prohibits the development of ADUs on parcels that use both the urban lot split and duplex provisions of the bill, and it applies the limitations on parking requirements from ADU law to both duplexes and urban lot splits under the bill.

For these reasons, the City of Torrance **Strongly Opposes** SB 1120.

Sincerely,

Patrick J. Furey
Mayor, City of Torrance

cc. Senator Ben Allen & Assemblyman Al Muratsuchi
Jeff Kiernan, League Regional Public Affairs Manager (via email)
Meg Desmond, League of California Cities, cityletters@cacities.org

3031 Torrance Boulevard • Torrance, California 90503 • 310/618-2801 • FAX 310/618-5841

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EXHIBIT D-1

SOUTH BAY CITIES
COUNCIL OF GOVERNMENTS

2355 Crenshaw Blvd., #125
Torrance, CA 90501
(310) 371-7222
sbccog@southbaycities.org
www.southbaycities.org

June 18, 2021

The Honorable David Chiu
Chair, Assembly Committee on Housing and Community Development
1020 N Street, Room 156
Sacramento, CA 95814

RE: SB 9 (Atkins) Increased Density in Single-Family Zones – Notice of Opposition

Dear Assemblymember Chiu,

On behalf of the South Bay Cities Council of Governments (SBCCOG), I am writing to express our continued opposition to SB 9, which would require a local government to ministerially approve a housing development containing two residential units in single-family residential zones. Additionally, this measure would require local governments to ministerially approve urban lot splits.

The SBCCOG agrees that housing affordability and homelessness continue to be among the most critical issues facing California cities. Affordably priced homes are out of reach for many people and housing is not being built fast enough to meet the current or projected needs of people living in the state. Cities lay the groundwork for housing production by planning and zoning new projects in their communities based on extensive public input and engagement, state housing laws, and the needs of the building industry.

While the desire to pursue a housing production proposal is appreciated, unfortunately, SB 9 as currently drafted would not spur much needed housing construction in a manner that supports local control, decision-making, and community input. State driven ministerial or by-right housing approval processes fail to recognize the extensive public engagement associated with developing and adopting zoning ordinances and housing elements that are certified by the California Department of Housing and Community Development (HCD).

The SBCCOG is committed to being part of the solution to the housing shortfall across all income levels and will continue to work collaboratively with the Legislature and League of California Cities to spur much needed housing construction while maintaining local control and helping the State towards more sustainable development. The SBCCOG has previously shared with you our December 2018 and February 2019 White Papers on housing to achieve zero emission housing in suburban cities. Those papers are available on our website here: https://www.southbaycities.org/news/response-sb-50-resolving-housing-carbon-dilemma-state-policy-role-local-government

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For these reasons, the SBCCOG continues to oppose SB 9. Should you have any questions, please contact SBCCOG Executive Director, Jacki Bacharach, at (310) 371-7222.

Sincerely,



Olivia Valentine, SBCCOG Chair
Mayor Pro Tem, City of Hawthorne

cc. South Bay Senators: Bradford, Kamlager
South Bay Assembly Members: Burke, Muratsuchi, Gipson, O'Donnell
Jeff Kiernan, Regional Affairs Manager, League of CA Cities, LA Division (via email)
League of California Cities (Via email: cityletters@cacities.org)
Bill Higgins, Executive Director, CALCOG

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EXHIBIT D-2

City of Whittier

13230 Penn Street, Whittier, California 90602-1772
(562) 567-9999 www.cityofwhittier.org

Joe Vinatieri
Mayor

Cathy Warner
Mayor Pro Tem

Jessica Martinez
Council Member

Fernando Dutra
Council Member

Henry Bouchot
Council Member

Brian Saeki
City Manager

June 8, 2021

The Honorable Cecilia Aguiar-Curry
Chair, Assembly Committee on Local Government
State Capitol, Room 5155
Sacramento, CA 95814

RE: SB 9 (Atkins) Increased Density in Single-Family Zones
Oppose (As amended 04/27/2021)

Dear Assembly Member Aguiar-Curry:

The City of Whittier writes to express our opposition to SB 9 (Atkins). SB 9 would require cities and counties to ministerially approve, without condition or discretion, a housing development containing two residential units on an individual parcel in single-family zones. Additionally, this measure would require local governments to ministerially approve an urban lot split, thus creating two independent lots that may be sold separately and contain a total of four dwelling units.

Housing affordability and homelessness are among the most critical issues facing California cities. Affordably priced homes are out of reach for many people and housing is not being built fast enough to meet the current or projected needs of people living in the state. Cities lay the groundwork for housing production by planning and zoning new projects in their communities based on extensive public input and engagement, state housing laws, and the needs of the building industry.

While the City of Whittier appreciates President pro Tempore Atkins' desire to pursue a housing production proposal, unfortunately, SB 9 as currently drafted will not spur much needed housing construction in a manner that supports local flexibility, decision making, and community input. State-driven ministerial or by-right housing approval processes fail to recognize the extensive public engagement associated with developing and adopting zoning ordinances and housing elements that are certified by the California Department of Housing and Community Development (HCD).

The City of Whittier understands that the housing supply and affordability are among the most poignant issues facing California cities. The COVID-19 pandemic has only intensified and highlighted this urgent issue. As

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such, the City of Whittier is in the midst of updating the Housing Plan Element to identify sites for additional housing. SB 9 (Atkins) would disregard this process and mandate more housing in existing single-family zones due to its top-down, one-size fits all approach. SB 9 (Atkins) does not acknowledge that each city is unique and the local agency is better equipped to understand the individual needs of the community.

California cities are committed to being part of the solution to the housing shortfall across all income levels and will continue to work collaboratively with you, the author, and other stakeholders on legislative proposals that will actually spur much needed housing construction.

For these reasons, the City of Whittier opposes SB 9 (Atkins).

Sincerely,

Joe Vinatieri
Mayor

cc. The Honorable Senate President pro Tempore Toni Atkins
Senator Bob Archuleta, District 32
Assembly Member Lisa Calderon, 57th District
Whittier City Council
Kristine Guerrero, League of California Cities

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EXHIBIT E

Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 9
Author: Atkins (D), Caballero (D), Rubio (D) and Wiener (D), et al.
Amended: 8/16/21
Vote: 21

SENATE HOUSING COMMITTEE: 7-2, 4/15/21
AYES: Wiener, Caballero, Cortese, McGuire, Skinner, Umberg, Wieckowski
NOES: Bates, Ochoa Bogh

SENATE GOVERNANCE & FIN. COMMITTEE: 5-0, 4/22/21
AYES: McGuire, Nielsen, Durazo, Hertzberg, Wiener

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 28-6, 5/26/21
AYES: Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Laird, Leyva, McGuire, Min, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener
NOES: Bates, Borgeas, Jones, Melendez, Ochoa Bogh, Wilk
NO VOTE RECORDED: Allen, Glazer, Kamlager, Limón, Newman, Stern

ASSEMBLY FLOOR: 45-19, 8/26/21 - See last page for vote

SUBJECT: Housing development: approvals

SOURCE: Author

DIGEST: This bill requires ministerial approval of a housing development of no more than two units in a single-family zone (duplex), the subdivision of a parcel zoned for residential use into two parcels (lot split), or both.

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Assembly Amendments provide that a local agency may deny a housing project otherwise authorized by this bill if the building official makes a written finding based upon the preponderance of the evidence that the housing development project would have a specific, adverse impact upon health and safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact; provides that a local agency shall require an applicant for an urban lot split to sign an affidavit stating that they intent to occupy one of the housing units as their principle residence for a minimum of three years, unless the applicant is a community land trust or a qualified nonprofit corporation; and removes the sunset.

ANALYSIS:

Existing law:

1) Governs, pursuant to the Subdivision Map Act, how local officials regulate the division of real property into smaller parcels for sale, lease, or financing.

2) Authorizes local governments to impose a wide variety of conditions on subdivision maps.

3) Requires a local jurisdiction to give public notice of a hearing whenever a person applies for a zoning variance, special use permit, conditional use permit, zoning ordinance amendment, or general or specific plan amendment.

4) Requires the board of zoning adjustment or zoning administrator to hear and decide applications for conditional uses or other permits when the zoning ordinance provides therefor and establishes criteria for determining those matters, and applications for variances from the terms of the zoning ordinance.

5) Establishes the California Environmental Quality Act (CEQA), which generally requires state and local government agencies to inform decision makers and the public about the potential environmental impacts of proposed projects, and to reduce those impacts to the extent feasible. CEQA applies when a development project requires discretionary approval from a local government. (See "Comments" below for more information.)

6) Requires ministerial approval by a local agency for a building permit to create an accessory dwelling unit (ADU) provided the ADU was contained within an existing single-family home and met other specified requirements. Requires a local agency to ministerially approve an ADU or junior accessory dwelling unit (JADU), or both, as specified, within a proposed or existing structure or

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within the same footprint of the existing structure, provided certain requirements are met.

7) Requires each city and county to submit an annual progress report (APR) to the Department of Housing and Community Development (HCD) and the Office of Planning and Research that provides specified data related to housing development.

This bill:

1) Requires a city or county to ministerially approve either or both of the following, as specified:
   a) A housing development of no more than two units (duplex) in a single-family zone.
   b) The subdivision of a parcel zoned for residential use, into two approximately equal parcels (lot split), as specified.

2) Requires that a development or parcel to be subdivided must be located within an urbanized area or urban cluster and prohibits it from being located on any of the following:
   a) Prime farmland or farmland of statewide importance;
   b) Wetlands;
   c) Land within the very high fire hazard severity zone, unless the development complies with state mitigation requirements;
   d) A hazardous waste site;
   e) An earthquake fault zone;
   f) Land within the 100-year floodplain or a floodway;
   g) Land identified for conservation under a natural community conservation plan, or lands under conservation easement;
   h) Habitat for protected species; or
   i) A site located within a historic or landmark district, or a site that has a historic property or landmark under state or local law, as specified.

3) Prohibits demolition or alteration of an existing unit of rent-restricted housing, housing that has been the subject of an Ellis Act eviction within the past 15 years, or that has been occupied by a tenant in the last three years.

4) Prohibits demolition of more than 25% of the exterior walls of an existing structure unless the local ordinance allows greater demolition or if the site has not been occupied by a tenant in the last three years.

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5) Authorizes a city or county to impose objective zoning, subdivision, and design review standards that do not conflict with this bill, except:
   a) A city or county shall not impose objective standards that would physically preclude 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. A city or county may, however, require a setback of up to four feet from the side and rear lot lines.
   b) A city or county shall not require a setback for an existing structure or a structure constructed in the same location and to the same dimensions as the existing structure.

6) Prohibits a city or county from requiring more than one parking space per unit for either a proposed duplex or a proposed lot split. Prohibits a city or county from imposing any parking requirements if the parcel is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop, or if there is a car share vehicle located within one block of the parcel.

7) Authorizes a city or county to require a percolation test completed within the last five years or, if the test has been recertified, within the last 10 years, as part of the application for a permit to create a duplex connected to an onsite wastewater treatment system.

8) Authorizes a local agency to deny a housing project otherwise authorized by this bill if the building official makes a written finding based upon the preponderance of the evidence that the housing development project would have a specific, adverse impact upon health and safety or the physical environment and there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact

9) Requires a city or county to prohibit rentals of less than 30 days.

10) Prohibits a city or county from rejecting an application solely because it proposes adjacent or connected structures, provided the structures meet building code safety standards and are sufficient to allow separate conveyance.

11) Provides that a city or county shall not be required to permit an ADU or JADU in addition to units approved under this bill.

12) Requires a city or county to include the number of units constructed and the number of applications for lot splits under this bill, in its APR.

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13) Requires a city or county to ministerially approve a parcel map for a lot split only if the local agency determines that the parcel map for the urban lot split meets the following requirements, in addition to the requirements for eligible parcels that apply to both duplexes and lot splits:
   a) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal size, provided that one parcel shall not be smaller than 40% of the lot area of the original parcel.
   b) Both newly created parcels are at least 1,200 square feet, unless the city or county adopts a small minimum lot size by ordinance.
   c) The parcel does not contain rent-restricted housing, housing where an owner has exercised their rights under the Ellis Act within the past 15 years, or has been occupied by tenants in the past three years.
   d) The parcel has not been established through prior exercise of an urban lot split.
   e) Neither the owner of the parcel, or any person acting in concert with the owner, has previously subdivided an adjacent parcel using an urban lot split.

14) Requires a city or county to approve a lot split if it conforms to all applicable objective requirements of the Subdivision Map Act not except as otherwise expressly provided in this bill. Prohibits a city or county from imposing regulations that require dedicated rights-of-way or the construction of offsite improvements for the parcels being created, as a condition of approval.

15) Authorizes a city or county to impose objective zoning standards, objective subdivision standards, and objective design review standards that do not conflict with this bill. A city or county may, however, require easements or that the parcel have access to, provide access to, or adjoin the public right-of-way.

16) Provides that a local government shall not be required to permit more than two units on a parcel.

17) Prohibits a city or county from requiring, as a condition for ministerial approval of a lot split, the correction of nonconforming zoning conditions.

18) Requires a local government to 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 principle residence for a minimum of three years from the date of the approval of lot split, unless the applicant is a community land trust, as defined, or a qualified nonprofit corporation, as defined.

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19) Provides that no additional owner occupancy standards may be imposed other than those contained within 18) above, and that requirement expires after five years.

20) Allows a city or county to adopt an ordinance to implement the urban lot split requirements and duplex provisions, and provides that those ordinances are not a project under CEQA.

21) Allows a city or county to extend the life of subdivision maps by one year, up to a total of four years.

22) Provides that nothing in this bill shall be construed to supersede the California Coastal Act of 1976, except that a local government shall not be required to hold public hearings for a coastal development permit applications under this bill.

Background

Cities and counties enact zoning ordinances to implement their general plans. Zoning determines the type of housing that can be built. In addition, before building new housing, housing developers must obtain one or more permits from local planning departments and must also obtain approval from local planning commissions, city councils, or county board of supervisors. Some housing projects can be permitted by city or county planning staff ministerially, or without further approval from elected officials. Projects reviewed ministerially require only an administrative review designed to ensure they are consistent with existing general plan and zoning rules, as well as meeting standards for building quality, health, and safety. Most large housing projects are not allowed ministerial review; instead, these projects are vetted through both public hearings and administrative review. Most housing projects that require discretionary review and approval are subject to review under CEQA, while projects permitted ministerially generally are not.

Comments

1) *Modest density can result in large-scale housing production.* This bill could lead to up to four homes on lots where currently only one exists. It would do so by allowing existing single-family homes to be converted into duplexes; it would also allow single-family parcels to be subdivided into two lots, while allowing for a new two-unit building to be constructed on the newly formed lot. According to the University of California, Berkeley Terner Center for Housing Innovation, this bill has the potential to allow for the development of nearly 6 million new housing units. Assuming only five percent of the parcels impacted

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by this bill created new two-unit structures, this bill would result in nearly 600,000 new homes.

2) *Historic preservation versus housing production.* As part of their general police powers, local governments have the authority to designate historic districts, which set specific regulations and conditions to protect property and areas of historical and aesthetic significance. While well-intentioned, academics and others have pointed out that there are negative impacts of historic districts on housing supply and racial equity. For example, in 2017, the Sightline Institute noted that, in relation to Seattle's historic preservation efforts, "rules for historic preservation can sabotage housing affordability just like any other cost, red tape, permitting delay, or capacity limits imposed on homebuilding." It made recommendations such as educating historic preservation board members on how the historic review process and resulting preservation mandates can impede homebuilding and harm affordability; raising the bar for justifying landmark designations in order to counteract local anti-development sentiment; and even prohibiting historic preservation restrictions from limiting new construction to less than the height or capacity that zoning allows.

   Sites within a historic district are categorically exempt from the provisions of this bill. While the committee understands the desire to protect the integrity of historic districts from an aesthetic perspective, it is unclear that allowing small multi-unit construction in historic districts — which would be subject to objective historic design standards — would undermine the integrity of the historic districts. In addition, exempting historic districts from bills designed to increase multi-unit housing supply could lead to fair housing challenges. This committee is aware of several California cities — including neighborhoods in Eastern San Francisco, Los Angeles, and San Jose — that have not excluded historic districts when performing rezonings.

   This bill also contains a very broad definition of what kinds of historic districts are automatically exempt from this bill. The historic district exemption, similar to exemptions included in other pending bills in the Senate, does not require a historic district to be on a federal or state historic registry. Instead, a city can designate a zone as historic without the typical rigorous historic designation process required for a historic district to be placed on a federal or state registry. Certain NIMBY groups are already discussing use of this broad exemption as a tool to exempt communities from state housing laws. If a historic district exemption is needed, a more focused and rigorous exemption — for example,

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similar to what the Governance and Finance Committee placed in SB 50 (Wiener, 2019) — should be considered.

3) *Senate's 2021 Housing Production Package.* This bill has been included in the Senate's 2021 Housing Production Package and is virtually identical to SB 1120 (Atkins, 2020). For key differences, see the Senate Housing Committee analysis.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

1) HCD estimates costs of $89,000 (General Fund) annually for 0.5 Personnel Years of staff time to provide technical assistance and outreach education to local agencies and affordable housing developers.

2) Unknown state-mandated local costs to establish streamlined project review processes for proposed duplex housing developments and tentative maps for urban lot splits, and to conduct expedited design reviews of these proposals. These costs are not state-reimbursable because local agencies have general authority to charge and adjust planning and permitting fees to cover their administrative expenses associated with new planning mandates.

SUPPORT: (Verified 8/27/21)

AARP
Abundant Housing LA
ADU Task Force East Bay
All Home
American Planning Association, California Chapter
Bay Area Council
Bridge Housing Corporation
Cal Asian Chamber of Commerce
California Apartment Association
California Asian Pacific Chamber of Commerce
California Association of Realtors
California Building Industry Association
California Chamber of Commerce
California Hispanic Chamber of Commerce
California YIMBY
Casita Coalition
Central Valley Urban Institute

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Chan Zuckerberg Initiative
Circulate San Diego
Cities of Alameda, Oakland, San Diego
Council Member Jon Wizard, City of Seaside
Council Member Zach Hilton, City of Gilroy
Council of Infill Builders
County of Monterey
East Bay for Everyone
Eden Housing
Facebook, INC.
Fathers and Families of San Joaquin
Fieldstead and Company, INC.
Generation Housing
Greenbelt Alliance
Habitat for Humanity California
Hello Housing
Hollywood Chamber of Commerce
Housing Action Coalition
Inland Empire Regional Chamber of Commerce
Innercity Struggle
League of Women Voters of California
LISC San Diego
Livable Sunnyvale
Local Government Commission
Long Beach YIMBY
Los Angeles Business Council
Los Feliz Neighborhood Council
Mayor Darrell Steinberg, City of Sacramento
Midpen Housing
Midpen Housing Corporation
Modular Building Institute
Mountain View YIMBY
National Association of Hispanic Real Estate Professionals
Natural Resources Defense Council
Non-profit Housing Association of Northern California
North Bay Leadership Council
Northern Neighbors
Orange County Business Council
Palo Alto Forward
Peninsula for Everyone

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People for Housing - Orange County
Pierre Charles General Construction
Plus Home Housing Solutions
San Diego Housing Commission
San Diego Regional Chamber of Commerce
San Fernando Valley YIMBY
San Francisco Bay Area Planning and Research Association
San Francisco YIMBY
Sand Hill Property Company
Santa Barbara Women's Political Committee
Santa Cruz YIMBY
Schneider Electric
Share Sonoma County
Silicon Valley @ Home
Silicon Valley Leadership Group
South Bay YIMBY
South Pasadena Residents for Responsible Growth
Streets for People Bay Area
TechEquity Collaborative
Tent Makers
Terner Center for Housing Innovation at the University of California, Berkeley
The Greater Oxnard Organization of Democrats
The Two Hundred
TMG Partners
United Way of Greater Los Angeles
Urban Environmentalists
YIMBY Action
YIMBY Democrats of San Diego County
Zillow Group
94 Individuals

OPPOSITION: (Verified 8/27/21)

Adams Hill Neighborhood Association
Aids Healthcare Foundation
Alameda Citizens Task Force
Albany Neighbors United
Berkeley Associated Neighbors Against Non-affordable Housing
Brentwood Homeowners Association
Burton Valley Neighborhoods Group
California Alliance of Local Electeds

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California Cities for Local Control
California Contract Cities Association
Catalysts
Cities Association of Santa Clara County
Citizens Preserving Venice
Cities of Arcata, Azusa, Bellflower, Belmont, Beverly Hills, Brea, Brentwood, Burbank, Calabasas, Camarillo, Carpinteria, Carson, Cerritos, Chino, Chino Hills, Clayton, Clearlake, Clovis, Colton, Corona, Costa Mesa, Cupertino, Cypress, Del Mar, Diamond Bar, Dorris, Downey, Dublin, Eastvale, El Segundo, Escalon, Fillmore, Fortuna, Foster City, Fountain Valley, Garden Grove, Glendora, Grand Terrace, Half Moon Bay, Hesperia, Hidden Hills, Huntington Beach, Indian Wells, Inglewood, Irvine, Irwindale, Kerman, King, La Canada Flintridge, La Habra, La Habra Heights, La Mirada, La Palma, La Quinta, La Verne, Lafayette, Laguna Beach, Laguna Niguel, Lakeport, Lakewood, Lancaster, Lawndale, Lomita, Los Alamitos, Los Altos, Malibu, Martinez, Maywood, Menifee, Merced, Mission Viejo, Montclair, Monterey, Moorpark, Murrieta, Newman, Newport Beach, Norwalk, Novato, Oakdale, Ontario, Orinda, Pacifica, Palm Desert, Palo Alto, Palos Verdes Estates, Paramount, Pasadena, Pinole, Pismo Beach, Placentia, Pleasanton, Poway, Rancho Cucamonga, Rancho Palos Verdes, Rancho Santa Margarita, Redding, Redondo Beach, Ripon, Rocklin, Rohnert Park, Rolling Hills, Rolling Hills Estates, Rosemead, San Buenaventura, San Carlos, San Clemente, San Dimas, San Fernando, San Gabriel, San Jacinto, San Marcos, San Marino, Santa Clara, Santa Clarita, Santa Monica, Santa Paula, Saratoga, Signal Hill, Simi Valley, South Gate, South Pasadena, Stanton, Sunnyvale, Temecula, Thousand Oaks, Torrance, Tracy, Upland, Vacaville, Ventura, Visalia, Vista, West Covina, Westlake Village, Whittier, Yorba Linda, Yuba City
Coalition for San Francisco Neighborhoods
Coalition to Save Ocean Beach
College Street Neighborhood Group
College Terrace Residents Association
Committee to Save the Hollywoodland Specific Plan
Community Associations Institute - California Legislative Action Committee
Comstock Hills Homeowners Association
Culver City Neighbors United
D4ward
Durand Ridge United
Encinitas Neighbors Coalition
Friends of Sutro Park
Grayburn Avenue Block Club

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Hidden Hill Community Association
Hills 2000 Friends of The Hills
Hollywood Knolls Community Club
Hollywoodland Homeowners Association
Howard Jarvis Taxpayers Association
Kensington Property Owners Association
LA Brea Hancock Homeowners Association
Lafayette Homeowners Council
Lakewood Village Neighborhood Association
Las Virgenes-Malibu Council of Governments
Latino Alliance for Community Engagement
League of California Cities
League of California Cities Central Valley Division
Linda Vista-Annandale Association
Livable California
Livable Pasadena
Los Altos Residents
Los Angeles County Division, League of California Cities
Los Feliz Improvement Association
Marin County Council of Mayors and Councilmembers
Menlo Park United Neighbors
Miracle Mile Residential Association
Miraloma Park Improvement Club
Mission Street Neighbors
Montecito Association
Mountain View United Neighbors
Neighborhood Council Sustainability Alliance Trees Committee
North of Montana Association
Northeast Neighbors of Santa Monica
Pacific Palisades Community Council
Planning Association for The Richmond
Riviera Homeowners Association
San Gabriel Valley Council of Governments
Save Lafayette
Seaside Neighborhood Association
Shadow Hills Property Owners Association
Sherman Oaks Homeowners Association
South Bay Cities Council of Governments
South Bay Residents for Responsible Development
South Shores Community Association

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Southwood Homeowners Association
Sunnyvale United Neighbors
Sunset-Parkside Education and Action Committee
Sustainable Tamalmonte
Tahoe Donner Association
Temecula Valley Neighborhood Coalition
Towns of Apple Valley, Colma, Fairfax, Los Altos Hills, Mammoth Lakes, Ross, Truckee, Woodside
Tri-Valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville
United Neighbors of Assembly District 24
United Neighbors of Senate District 13
Ventura Council of Governments
Verdugo Woodlands West Homeowners Association
West Pasadena Residents' Association
West Torrance Homeowners Association
West Wood Highlands Neighborhood Association
Westside Regional Alliance of Councils
Westwood Hills Property Owners Association
Westwood Homeowners Association
Wilshire Montana Neighborhood Coalition
Windsor Square Association
290 Individuals

ARGUMENTS IN SUPPORT: According to the author, "Senate Bill 9 promotes small-scale neighborhood residential development by streamlining the process for a homeowner to create a duplex or subdivide an existing lot. SB 9 strikes an appropriate balance between respecting local control and creating an environment and opportunity for neighborhood scale development that benefits the broader community. To that end, the bill includes numerous safeguards to ensure that it responsibly creates duplexes and strategically increases housing opportunities for homeowners, renters, and families alike. At a time when many Californians are experiencing economic insecurity caused by the pandemic, this bill will provide more options for families to maintain and build intergenerational wealth – a currency we know is crucial to combatting inequity and creating social mobility. SB 9 provides flexibility for multigenerational housing by allowing homeowners to build a modest unit on their property so that their aging parent or adult child can have an affordable place to live. Building off the successes of ADU law, SB 9 offers solutions that work in partnership with a number bills included in the Senate's Housing Package, 'Building Opportunities For All' aimed at combating the State's housing crisis."

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ARGUMENTS IN OPPOSITION: According to the League of California Cities, "SB 9 as currently drafted will not spur much needed housing construction in a manner that supports local flexibility, decision making, and community input. State-driven ministerial or by-right housing approval processes fail to recognize the extensive public engagement associated with developing and adopting zoning ordinances and housing elements that are certified by [HCD]."

ASSEMBLY FLOOR: 45-19, 8/26/21
AYES: Aguiar-Curry, Arambula, Berman, Calderon, Carrillo, Cervantes, Chiu, Cooley, Cooper, Megan Dahle, Flora, Fong, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Lackey, Lee, Low, Mathis, Mayes, Medina, Mullin, Quirk, Quirk-Silva, Ramos, Reyes, Robert Rivas, Rodriguez, Salas, Stone, Ting, Valladares, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon
NOES: Bauer-Kahan, Bigelow, Bloom, Boerner Horvath, Daly, Davies, Frazier, Friedman, Gabriel, Irwin, Levine, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Seyarto, Smith, Voepel, Waldron
NO VOTE RECORDED: Bennett, Bryan, Burke, Chau, Chen, Choi, Cunningham, Kiley, Maienschein, McCarty, Nguyen, Patterson, Luz Rivas, Blanca Rubio, Santiago

Prepared by: Alison Hughes / HOUSING / (916) 651-4124
8/28/21 11:32:51

****** END ******

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EXHIBIT 3