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Date: October 25, 2021

To: Planning Commission

Re: Zoning Ordinance Amendments Related to Senate Bill 9 (October 28, 2021 Agenda)

Dear Chair Schwartz and Planning Commissioners,

Allied Neighborhoods Association has been working for almost five decades to preserve and protect the City and its neighborhoods through conservation and good planning. We appreciate the opportunity to comment on the above agenda item.

We need to respond to SB9 by doing what we can to minimize impacts, especially in High Fire Hazard Areas (HFHAs). An emphasis in the City's Legislative Platform is retaining local control, and although limited in SB9, now is our opportunity to do that within the allowed parameters.

We appreciate the work by Planning and Legal staff on the proposed SB9 amendments, and acknowledge there are numerous amendment provisions to like in the documents. That said, we'd like to provide comments on a few topic areas.

1. Limit residential development in HFHAs (Pg. 9/88)

"Safety Element policy S33 directs that the City continues to implement programs that reduce the risk of wildland and structure fires and that minimize the short- and long-term effects of fires, including limiting residential development in high fire hazard areas and continuing vegetation fuels management and vegetation chipping."

2. Maximum Number of Units. (Pg. 4/88)

From State Law column, Table 1:

- *"ADUs are allowed; however, local agencies are not required to permit an ADU on parcels that propose both a two-unit residential development and an Urban Lot Split.*

- *Objective zoning standards allowed."*

Especially in our four HFHAs, we need to take full advantage of the opportunity to **NOT ALLOW ADUs** on parcels as described above.

(Note – this would mean a property owner could 1) do an SB9 project but no ADU or 2) have a residence on a single-unit lot and the opportunity for 2 ADUs, as outlined in our ADU Ordinance.)

3. ADU Buildout

The charts below were provided as part of a Staff presentation during our 2020 ADU Update (the City adopted additional ADU zoning amendments in response to new State ADU legislation).

Zone Type	Existing # of Units	Estimated Maximum Buildout (# of Units)	Estimated Change (# of Units)
Single-Unit Zones	12,673	35,584	+22,911
Multiple-Unit Zones	20,561	34,454	+13,893
Nonresidential Zones	3,480	5,301	+1,821
Grand Total	**36,912**	**75,537**	**+38,625**

High Fire Hazard Zone	Existing Units	Estimated Max Units	Estimated Change
Extreme Foothill	104	287	+183 (+176%)
Foothill	3,694	9,920	+6,226 (+169%)
Coastal	254	754	+500 (+197%)
Coastal Interior	909	2,093	+1,184 (+130%)
Outside Zone	31,951	62,483	+30,532 (+96%)
Grand Total	**36,912**	**75,537**	**+38,625 (+105%)**

The maximum buildout, specifically of ADUs in HFHAs and single-unit zones, is pertinent to consideration of SB9 zoning amendments. <u>These charts show significant potential additional units in HFHAs and single-unit zones!</u>

4. Recommendation for Defensible Space <u>Annual Inspection Program</u> for SB9 Projects in HFHAs. Per the CWPP (pg. 47/202), defensible space is required in HFHAs:

"2.8.1 Defensive Space and Vegetation Management

As outlined in Chapter 8.04 of the City of Santa Barbara's Municipal Code (adopted by Ordinance #5920), all parcels in the City's High Fire Hazard Area are required to meet City-defined defensible space requirements year-round. (emphasis added) Vegetation within defensible space zones, native or otherwise, must be maintained to create an effective fuel break by thinning dense vegetation and removing dry brush, flammable vegetation, and combustible growth from areas within 30 to 100 feet (depending on High Fire Hazard Area Zone) of all buildings or structures. The following defensible space widths are required by High Fire Hazard Area Zone:

- *Coastal Interior Zone: 30 to 50 feet of defensible space required from structure*
- *Coastal Zone: 50 to 70 feet defensible space required from structure*
- *Foothill Zone: 100 feet defensible space required from structure*
- *Extreme Foothill Zone: 150 feet defensible space required from structure"*

Defensible space is a very important component of the strategy to help reduce fire risks and severity. Currently, it may be kind of a hit and miss thing whether defensible space is maintained, especially as vegetation can grow back quickly. To our knowledge there is no regular or annual inspection program to make sure defensible space is maintained. For starters, we need an annual defensible space inspection program for all built SB9 projects in HFHAs.

5. Floor Area Maximum (pg. 4/88) We need to take a 2nd look at the Floor Area Maximum in Table 1, as there may be specific categories which are too generous.

For example, *"Lots up to 14,999 square feet and developed with two or more-bedroom units: 1,000 square feet."* Why does a 2-bedroom unit need to be 1000 sq ft, when we have been trying to incentivize smaller units? (2-bedroom unit size in AUDs is frequently below 1000 sq ft)

6. Accessory Buildings (pg. 5/88)

From Table 1, State Law column, ***"****Objective zoning standards allowed"*.

We suggest evaluating the accessory building floor area maximums. Using Table 1 reference to SBMC 30.140.020 - the maximum total square footage numbers per lot seem overly generous for SB9 projects.

7. Where are the Coastal HFHAs? (Pg. 3/88, Special Location Considerations)

From Table 1, Proposed Title 28 and 30 Amendments, *"Two-unit residential development shall not be permitted within the Extreme Foothill or Foothill High Fire Hazard Zones, unless existing and proposed buildings are designed to meet high fire construction standards adopted or enforced by the City, as determined by the Building Official or the Fire Code Official, including but not limited to any requirement for fire sprinklers. No variance or modification to any Fire Code requirements or high fire construction standards shall be permitted."*

Why are the Coastal and Coastal Interior HFHAs excluded from this section?

8. SB9 projects outside HFHAs.

With such increased density on single-unit lots throughout the City from SB9, also adding an ADU probably should not be allowed. (see ADU Buildout charts, section 3 of our letter)

We appreciate your consideration of our comments.

Sincerely,

Allied Neighborhoods Association

PS - We've included a separate attached document, which is draft SB9 resolution/ordinance amendments for a Southern California jurisdiction. This was shared with Allied and drafted by some former LA City planners.

Is it true Affordability can be added to SB9 projects?

Draft language from this attached document:

*"**6) Affordable Covenant.** There is at present an urgent Statewide and City concern about the provision of affordable housing. Every SB 9 project in the City shall require that a thirty-year affordable covenant for at least moderate income level must be applied to one of the units and listed on the HCID registry of affordable units or the applicant must pay an in-lieu fee (to be determined) that goes toward the City's provision of affordable housing."*

Cc: Renee Brooke
Allison De Busk
Brenda Beltz
Daniel Gullett
Tava Ostrenger
Ariel Calonne
Mayor Murillo and City Council

ATTACHMENT

RESOLUTION

WHEREAS, Senate Bill 9 (Atkins) (the "Bill" or "SB 9"), entitled the California Home Act, was signed into law by the Governor on September 19, 2021 and becomes effective on January 1, 2022; and

WHEREAS, the Bill amends Government Code Section 66452.6, and adds two new Government Code Sections 65852.1 and 66411.7; and

WHEREAS, the Bill will require cities and counties, including charter cities, to provide for the ministerial (or "by right") approval of a housing development containing two residential units of at least 800 square feet in floor area ("duplex") and a parcel map dividing one existing lot into two equal parts ("lot split"} within a single-family residential zone for residential use; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of this proposed subdivision of one lot into two parcels by removing public notice and hearings by the Planning Department, by requiring only administrative review of the project, and by providing ministerial approval of a lot split, and also offers several opportunities to extend the time, up to 10 years, for the use of an approved or conditionally approved Tentative Parcel Map; and

WHEREAS, the Bill exempts SB 9 projects from environmental review as required by the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing, thereby undermining community participation and appropriate environmental impact vetting by local legislative bodies; and

WHEREAS, SB 9 further stipulates that a city or county cannot require a duplex project to comply with any standard that would prevent two units from being built on each resultant lot, and would prohibit a local agency from imposing regulations that require dedications of rights-of way or the construction of offsite and onsite improvements for parcels created through a lot split; and

WHEREAS, in addition to various constraints on SB 9 developments as set forth in SB 9, the Bill also authorizes cities and counties to enact local SB 9 implementation ordinances and guidelines that are objective and that are not inconsistent with its mandatory provisions; and

WHEREAS, it is important that the City of Los Angeles begin immediately developing a local SB 9 implementation ordinance with associated guidelines and not repeat the past mistakes related to State Housing legislation, specifically the State's 2017 Accessory Dwelling Unit Bill (AB 2299) which became effective on January 1, 2017; however, the City of Los Angeles took approximately 3 years to enact a local ordinance for its implementation; and

WHEREAS, due to the Bill's enactment on September 12, 2021 and its effective date of January 1, 2022, there is not sufficient time for a publicly-considered implementation ordinance to be developed, publicly reviewed, and adopted by January 1, 2022; however, in the short-term, the City can and must develop a memorandum of understanding to obligate all City Departments and agencies to abide by interim rules and requirements to implement SB 9 locally until such time as the permanent ordinance is adopted; and

WHEREAS, the City must also establish a minimum threshold by which certain SB 9 projects cannot be ministerial and must be subject to greater scrutiny in terms of a public hearing process and heightened environmental review; and

WHEREAS, there remains significant unanswered questions about legal, ownership, county-city, and interdepartmental responsibility pursuant to SB 9 implementation that need to be resolved; and

WHEREAS, it is important that both the short-term memorandum and long-term ordinance establish basic precepts applicable to all SB 9 projects, including, but not limited to:

1) **Objective Zoning/Subdivision/Design Standards.** The Bill authorizes the City to impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to structures and parcels created by an urban lot split that do not conflict with this section; or preclude the construction of two 800 square foot minimum housing units. Accordingly, all such existing objective City standards shall apply to SB 9 projects, in addition to any additional objective standards that the City may adopt.

2) **Maximum of Four Units and Two Lots.** SB 9 obligates the City to allow two units per lot, and one lot split, for a total of four units and a total of two lots (parcels). The City is not required and shall not allow any additional units or structures (such as ADUs), nor any further lot splits, on any parcel that has been split once and on which four units have been approved.

3) **Parking.** The Bill allows the City to choose to require parking consistent with the terms of the Bill. Accordingly, the City shall require off-street parking of one space per unit, unless 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 or there is a car share vehicle located within one block of the parcel.

4) **Setbacks.** SB 9 allows the City to choose to require setbacks consistent with the terms of the Bill. Accordingly, the City shall require setbacks of up to four feet from the side and rear lot lines in all SB 9 projects and circumstances that are not expressly exempted from such a requirement by the Bill.

5) **Applicant Residency.** The Bill requires every SB 9 applicant to provide an affidavit confirming that the applicant intends to reside in one of the SB 9 units for three years. To fulfill this obligation, the City shall require the applicant to sign and record an affidavit placing a covenant that will run with the land to confirm that the applicant will reside in one of the SB 9 units for three years from the City's grant of the application where a unit already exists, or, if no unit then exists, for three years from the City's issuance of the unit's Certificate of Occupancy.

6) **Affordable Covenant.** There is at present an urgent Statewide and City concern about the provision of affordable housing. Every SB 9 project in the City shall require that a thirty-year affordable covenant for at least moderate income level must be applied to one of the units and listed on the HCID registry of affordable units or the applicant must pay an in-lieu fee (to be determined) that goes toward the City's provision of affordable housing.

7) **Impact/Development Fees.** The City shall require the payment of impact or development fees related to the specific impact that will be imposed on a community by the creation of a SB 9 second lot and additional units. Impact fees can be related to a variety of impacts including but not limited to infrastructure, construction impacts, recreation, libraries, and public art.

8) **Special District Exemptions**. SB 9 exempts historic districts and structures from its terms, and also retains the protections of the California Coastal Act. However, Los Angeles has many other special districts that shall be exempted from SB 9 including Survey LA documented historic areas and properties, HPOZs, equestrian-zoned areas, hillside areas with substandard streets, wildlife corridors, habitat blocks, high

fire, and high wind zones. Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. These districts shall be exempt and protected from SB 9 development.

9) **Unavoidable Adverse Impacts.** The Bill authorizes the City to deny an SB 9 project upon written findings, based on a preponderance of evidence, that the project will have a specific, adverse impact upon public health and safety or the physical environment for which there is no feasible method to mitigate or avoid. The City shall assess every SB 9 application for such unavoidable adverse impacts, shall provide its written assessment to the applicable City Council Office, and shall deny a project if an unavoidable adverse impact is identified.

Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. These districts as identified above and others as appropriate shall be exempt and protected from SB 9 development.

10) **Notification Requirements**. Every SB 9 filing shall require the City to notify those property owners and tenants within a 500-foot radius from the proposed project site that a parcel map has been filed with the City.

I THEREFORE MOVE that the Department of Building and Safety, with assistance by the City Attorney and City Planning Department, prepare a memorandum of understanding prior to December 31, 2021 that is consistent with this Resolution and that shall be used by all Departments and agencies until such time as a local implementation ordinance is adopted.

I FURTHER MOVE that the City Planning Department, with the assistance of the City Attorney and Department of Building and Safety, begin developing a work program for the preparation of the permanent ordinance for the implementation of SB 9.