

## RESOLUTION NO. 11-2022

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFICA ADOPTING INTERIM GUIDANCE, RULES, AND REGULATIONS TO IMPLEMENT SB 9; AND DIRECTING THE PREPARATION OF AN SB 9 IMPLEMENTING ORDINANCE

**WHEREAS**, Senate Bill 9 (Atkins) (“SB 9”), entitled the California HOME Act, was signed into law by the Governor on September 19, 2021 and became effective on January 1, 2022; and

**WHEREAS**, SB 9 amends Government Code Section 66452.6, and adds two new Government Code Sections 65852.1 and 66411.7; and

**WHEREAS**, SB 9 requires cities and counties, including charter cities, to provide for the ministerial (“by right”) approval of a housing development containing two (2) residential units of at least 800 square feet in floor area (“duplex”) and a parcel map dividing one (1) existing lot into two (2) parts (“lot split”) within a single-family residential zone for residential use; and

**WHEREAS**, SB 9 eliminates discretionary review and public oversight of proposed subdivisions of one (1) lot into two (2) parcels by removing public notice and hearings by the City Engineer or Planning Commission, by requiring administrative review of the project, and by providing ministerial approval of a lot split; and

**WHEREAS**, SB 9 continues to allow cities and counties, including charter cities, to require approval of a coastal development permit (“CDP”) for SB 9 duplex and lot split projects located in the Coastal Zone to ensure compliance with the California Coastal Act, except that such CDP applications shall be considered administratively without a public hearing and with full public notice and appeal provisions as provided in the City of Pacifica’s (“City’s”) certified Local Coastal Program; and

**WHEREAS**, SB 9 exempts projects authorized thereunder from environmental review pursuant to the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing; and

**WHEREAS**, SB 9 further stipulates that a city or county cannot require a SB 9 duplex project to comply with any standard that would prevent two (2) units of at least 800 square feet each from being built on each resultant lot, and prohibits 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 SB 9 lot split; and

**WHEREAS**, in addition to various constraints on SB 9 developments as set forth therein, SB 9 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. Accordingly, all such existing objective City standards shall apply to SB 9 projects; and

**WHEREAS**, SB 9 allows two (2) units per lot, and one (1) lot split, for a total of four (4) units and a total of two (2) lots. The City is not required and shall not allow any additional units or structures (such as ADUs), nor any further lot splits; and

**WHEREAS**, due to SB 9's effective date of January 1, 2022, it is recommended that the City adopt interim guidance, rules, and regulations to guide City Departments to implement SB 9 until such time as an implementation ordinance and objective standards may be developed, publicly reviewed, considered by the Planning Commission and recommended to the City Council for adoption; and

**WHEREAS**, adoption of this Resolution and implementation of SB 9 Interim Guidance, Rules, and Regulations are not considered projects under the California Environmental Quality Act pursuant to Government Code sections 65852.21(j) and 66411.7(n).

**NOW, THEREFORE, BE IT RESOLVED** that the City Council of the City of Pacifica:

Section 1. The City Council finds and declares that duplex and lot split projects authorized under SB 9 are a form of state mandated housing that allows for expanded housing options.

Section 2. The City Council hereby approves the SB 9 Interim Guidance, Rules, and Regulations, attached hereto and hereinafter incorporated by reference as Exhibit A, for City staff to reference and apply to any applications submitted pursuant to SB 9 until such time as the City Council adopts an SB 9 implementation ordinance and, directs staff to prepare an SB 9 implementation ordinance for consideration and adoption by the City Council.

Section 3. Any development applications filed with the City of Pacifica pursuant to SB 9 shall be pay a deposit of \$11,500.00 at the time of application, and shall pay all fees and other costs associated with the processing of such applications in accordance with the City's Administrative Policy No. 2.

Section 4. Severability. If any term, provision, or portion of this Resolution or its application to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of this Resolution shall continue in full force and effect unless amended or modified by the City.

Section 5. Taking Effect. The Interim Guidance, Rules, and Regulations will take immediate effect upon adoption of this Resolution.


PASSED AND ADOPTED as a resolution of the City Council of the City of Pacifica at the regular meeting held on the 28<sup>th</sup> day of February 2022, by the following vote:

**AYES**, Councilmembers: Beckmeyer, Bier, Bigstycck, O'Neill, Vaterlaus.

**NOES**, Councilmembers: n/a

**ABSENT**, Councilmembers: n/a

**ABSTAIN**, Councilmembers: n/a


  
Mary Bier (Mar 1, 2022 07:21 PST)  
\_\_\_\_\_  
Mary Bier, Mayor

ATTEST:



\_\_\_\_\_  
Sarah Coffey, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Michelle Kenyon, City Attorney

## EXHIBIT A

### Interim Guidance, Rules, and Regulations for SB 9 Projects

SB 9 went into effect on January 1, 2022. SB 9 requires ministerial (“by-right”) approval of:

- Two (2) residential units per lot (Two-Unit Developments)
- Parcel maps for an urban lot split (Urban Lot Splits)

The following summary and tables provide interim guidance, rules, and regulations while staff develops a permanent Ordinance and Objective Standards to implement SB 9. Starting January 1, 2022, property owners interested in adding a residential unit(s) or conducting a lot split under SB 9 can apply for a ministerial permit with the City subject to the criteria below.

#### Qualifying Criteria for All SB 9 Applications

1. SB 9 application eligibility shall only apply in areas that meet all criteria provided in Government Code § 65913.4(a)(6), subparagraphs (B) to (K), inclusive. City staff may need to request additional information from an applicant to determine that SB 9 housing developments meet the qualifying criteria, such as a title report or technical studies prepared by an expert.
2. Zoning:
  - a. The property is zoned single-family residential which in the City of Pacifica shall mean a zoning district where single-family residential use is a permitted use. This would not include a zoning district where single-family residential use is a conditional use, or where it is a lawful nonconforming use. Based on the City’s current zoning, the R-1 (Single-Family Residential), R-1-H (Single-Family Residential Hillside), and R-2 (Two-Family Residential) zoning districts would each be considered a “single-family residential zone” for purposes of SB 9.
  - b. A P-D (Planned Development) zoning district may be considered a single-family residential zone for purposes of SB 9, as outlined below.
    - i. P-D Zoning District. P-D zoning districts shall be considered a “single-family residential zone” for purposes of SB 9 when the development plan for the respective P-D zoning district authorizes single-family residential use as a permitted use. This would not include a development plan where a single-family residential use is a conditional use, or where it is a lawful nonconforming use.
    - ii. P-D zoning districts for which the City does not possess an approved development plan authorizing single-family residential use as a permitted use shall not be a single-family residential zone for purposes of SB 9.

3. Existing Rental Housing: The proposed project cannot demolish or alter housing that:
  - a. Restricts rents to persons of moderate, low, or very-low income (deed-restricted housing).
  - b. Housing that is subject to rent or price control.
  - c. The project site cannot have been withdrawn from the rent controlled rental market within the past fifteen (15) years (subject to the Ellis Act).
  - d. Rental Occupancy: The project site cannot contain a housing unit that has been occupied by a tenant within the last three (3) years.
4. Exterior Demolition: The project does not require the demolition of more than 25 percent of the existing exterior walls of a structure.
5. Short Term Rental Restrictions: Rental of any unit created under SB 9, including a unit constructed on a lot resulting from an urban lot split, must be for a term longer than 30 days. The applicant shall record a deed restriction prior to issuance of a building permit (two residential unit project) or parcel map recordation (urban lot split) to establish this limitation. The restriction shall only apply to a residential unit constructed after the date of approval of a two residential unit project or an urban lot split, and shall not apply to any housing unit that existed prior to approval of two residential unit project or an urban lot split.
6. Historic Resources: The project does not involve a site that is located within a historic district or property included on the State Historic Resources Inventory, as defined in § 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.

**Additional Criteria for Two-Unit Developments**

Existing City Objective Zoning and Development Standards, and statutory objective development standards will be enforced, such that:

1. All SB 9 housing developments shall meet the requirements mandated by SB 9 law – Gov. Code §§ 65852.21(a), (b)(2), (e), (g) and (h).
2. Objective standards do not preclude the construction of up to two (2) units of at least 800 square feet each in floor area.
3. Setbacks:
  - a. As provided in Gov. Code § 65852.21(b)(2)(B)(ii). No setbacks are required for existing legal structures or structures constructed in the same location and dimensions of an existing legal structure.
  - b. A minimum 4-foot setback from the rear and side property lines shall be imposed for structures that do not meet the above criteria.
4. One (1) off-street parking space within a garage per unit is required pursuant to PMC § 9-4.2818(a)(1) except no off-street parking is required for projects located:

- a. Within a one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of § 21155 of the Public Resources Code, or a major transit stop, as defined in § 21064.3 of the Public Resources Code – Gov. Code § 65852.21(c)(1); or
  - b. Within one block of a car share.
- 5. The City shall deny an SB 9 housing development application if the Building Official makes a specific written finding that the development project would have an adverse impact as defined and determined in paragraph (2) of subdivision (d) of Gov. Code § 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. – Gov. Code § 65852.21(d).
- 6. The City shall not permit any accessory dwelling unit (ADU) or junior ADU on parcels that use both the authority of Gov. Code § 65852.21 (SB 9 two residential unit developments) and § 66411.7 (SB 9 urban lot splits.)
- 7. Individual units may be attached or detached, provided that the structure(s) meet California Building Code safety requirements and are sufficient to allow separate conveyance.
- 8. For parcels within a qualifying P-D zoning district, the City’s procedure to require proof of application submittal to a homeowners association (HOA) for their review and comment prior to issuance of a building permit as set forth in PMC § 9-4.2213 shall apply to an application for a two residential unit project.
- 9. For projects in the Hillside Preservation District, the objective coverage limitations that result from application of the HPD coverage controls in PMC Title 9, Chapter 4, Article 22.5 for project sites located within the HPD overlay district may be imposed to the extent they do not preclude construction of up to two units, each with at least 800 square feet in floor area (“Minimum Allowable Project”). No variance may be required to obtain the minimum HPD coverage necessary to construct a Minimum Allowable Project but staff may require the project to be modified to include more than one story in height, subject to the applicable zoning district height limit, in order to minimize the amount of HPD coverage needed for the project. Due to the ministerial approval requirements of SB 9, the discretionary review process that includes rezoning to the P-D (Planned Development) zoning district and approval of a development plan and specific plan in the HPD, shall not be imposed.
- 10. Coastal Development Permit: No public hearing shall be held for a coastal development permit (CDP) application for a two residential unit development. As such, the procedures for processing an administrative CDP contained in PMC § 9-4.4306(m) shall be followed when processing a two residential unit application within the Coastal Zone, except, however, that only the findings for approval of a CDP identified in PMC § 9-4.4304(k) shall be applicable. The development must also be found to be consistent with the LCP and Coastal Act as proposed, or can be made consistent with design modifications, adaptive strategies, or other conditions. Development of new residential units in areas projected to be impacted by sea level rise may be inconsistent with the Coastal Act or LCPs if

adaptive strategies cannot minimize the risk of hazards and protect coastal resources. (See Coastal Commission SB 9 Memo dated January 21, 2022). All notice requirements and appeal procedures applicable to CDP applications, as well as the requirement to submit a development permit application and associated deposit, shall apply.

### **Additional Criteria for Urban Lot Splits**

Existing City Objective Subdivision Standards, and statutory objective development standards, including but not limited to those objective standards in PMC Title 10, will be enforced, such that:

1. All SB 9 Urban Lot Splits shall meet the requirements mandated by SB 9 law – Government Code §§ 66411.7(a), (b), (c)(2), (f), (g), (h), (k) and (l)
2. Objective standards do not preclude the construction of up to two (2) units per lot of at least 800 square feet each in floor area.
3. Each new parcel must:
  - a. be at least 1,200 square feet in size (i.e., parcel being split must be at least 2,400 square-feet in size).
  - b. be no smaller than 40 percent of the original parcel's size.
  - c. be limited to residential use.
4. Setbacks:
  - a. As provided in Gov. Code § 66411.7(c)(3).
  - b. No setbacks are required for existing legal structures or structures constructed in the same location and dimensions of an existing legal structure.
  - c. A minimum 4-foot setback from the rear and side property lines shall be imposed for structures that do not meet the above criteria.
5. The City shall deny an SB 9 housing development application if the Building Official makes a specific written finding that the development project would have an adverse impact as defined and determined in paragraph (2) of subdivision (d) of Gov. Code § 65589.5, upon public health and safety or the physical environment and for which there is no method to mitigate or avoid the specific, adverse impacts – Gov. Code § 66411.7 (d).
6. Each lot created by an SB 9 urban lot split must adjoin the public right-of-way (ROW), or provide access to the public right-of-way, by way of a recorded access easement in favor of the parcel requiring ROW access – Gov. Code § 66411.7(e)(2).
7. One (1) off-street parking space within a garage per unit is required pursuant to PMC § 9-4.2818(a)(1) except no off-street parking is required for projects located:
  - a. Within a one-half mile walking distance of either a high-quality transit corridor, as defined in subdivision (b) of § 21155 of the Public Resources Code, or a major transit stop, as defined in § 21064.3 of the Public Resources Code; or
  - b. Within one block of a car share – Gov. Code § 66411.7(e)(3).

- c. Tandem parking shall be prohibited pursuant to PMC § 9-4.2813(a).
8. The City shall not permit more than two units of housing, including primary dwelling units, SB 9 housing development units, ADUs, and/or JADUs, on lots created pursuant to the authority of Gov. Code § 66411.7 (SB 9 urban lot splits) (Gov. Code § 66411.7(j).)
9. The correction of existing legal nonconformities shall not be imposed as a condition of approval for any lot split under SB 9.
10. Sequential splitting of a parcel established through a prior SB 9 split is prohibited. Nor can there be a lot split if the owner of the parcel being subdivided (or someone working in concert with that owner) has subdivided an adjacent parcel pursuant to SB 9.
11. Owners must sign an affidavit that they intend to occupy one of the housing units as their principal residence for a minimum of three (3) years from the date of the lot split approval.
12. A subdivision map may be extended for up to four (4) years with a 24-month extension period.
13. The City shall require, as a condition of an urban lot split approval, easements for the provision of public services and facilities.
  - a. The City shall not require dedications of rights-of-way or the construction of off-site improvements as a condition of urban lot split approval, even if such required dedications may otherwise be considered objective standards.
14. The uses allowed on a lot created with an urban lot split shall be limited to residential uses. This requirement would apply to both lots resulting from an urban lot split. The applicant shall record a deed restriction concurrent with the parcel map to reflect this restriction on use.
15. Coastal Development Permit: No public hearing shall be held for a CDP application for an urban lot split. As such, the procedures for processing an administrative CDP contained in PMC § 9-4.4306(m) shall be followed when processing an urban lot split application within the Coastal Zone, except, however, that only the findings for approval of a CDP identified in PMC § 9-4.4304(k) shall be applicable. The development must also be found to be consistent with the LCP and Coastal Act as proposed, or can be made consistent with design modifications, adaptive strategies, or other conditions. Development of new residential units in areas projected to be impacted by sea level rise may be inconsistent with the Coastal Act or LCPs if adaptive strategies cannot minimize the risk of hazards and protect coastal resources. (See Coastal Commission SB 9 Memo dated January 21, 2022). All notice requirements and appeal procedures applicable to CDP applications, as well as the requirement to submit a development permit application and associated deposit, shall apply.








# For Signature: ResolutionNo11-2022\_SB9\_InterimGuidance-Approved

Final Audit Report

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