

Introduced by Senators Atkins, Caballero, Rubio, and Wiener
(Coauthors: Senators Gonzalez and McGuire)
(Coauthor: Assembly Member Robert Rivas)

December 7, 2020

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.

LEGISLATIVE COUNSEL'S DIGEST

SB 9, as introduced, 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 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 city or county 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, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

The Subdivision Map Act vests the authority to regulate and control the design and improvement of subdivisions in the legislative body of a local agency and sets forth procedures governing the local agency's processing, approval, conditional approval or disapproval, and filing of tentative, final, and parcel maps, and the modification of those maps. Under the Subdivision Map Act, an approved or conditionally approved tentative map expires 24 months after its approval or conditional approval or after any additional period of time as prescribed by local ordinance, not to exceed an additional 12 months, except as provided.

This bill, among other things, would require a city or county to ministerially approve a parcel map or tentative and final 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 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 city or county 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 on either of the resulting parcels, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances.

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

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report on a project that it

proposes to carry out or approve that may have a significant effect on the environment. CEQA does not apply to the approval of ministerial projects.

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

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

This bill would exempt a local government 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 a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 65852.21 is added to the Government
- 2 Code, to read:
- 3 65852.21. (a) A proposed housing development containing
- 4 two residential units within a single-family residential zone shall
- 5 be considered ministerially, without discretionary review or a
- 6 hearing, if the proposed housing development meets all of the
- 7 following requirements:
- 8 (1) The parcel subject to the proposed housing development is
- 9 located within a city the boundaries of which include some portion
- 10 of either an urbanized area or urban cluster, as designated by the
- 11 United States Census Bureau, or, for unincorporated areas, a legal

1 parcel wholly within the boundaries of an urbanized area or urban
2 cluster, as designated by the United States Census Bureau.

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

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

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

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

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

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

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

26 (A) If a local ordinance so allows.

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

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

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

38 (2) (A) The city or county shall not impose objective zoning
39 standards, objective subdivision standards, and objective design

1 standards that would have the effect of physically precluding the
2 construction of up to two units.

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

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

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

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

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

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

23 (2) For residential units connected to an onsite wastewater
24 treatment system, a percolation test completed within the last five
25 years, or, if the percolation test has been recertified, within the last
26 10 years.

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

29 (e) Notwithstanding Section 65852.2, a local agency shall not
30 be required to permit an accessory dwelling unit on parcels that
31 use both the authority contained within this section and the
32 authority contained in Section 66411.7.

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

38 (g) Local agencies shall include units constructed pursuant to
39 this section in the annual housing element report as required by

1 subparagraph (I) of paragraph (2) of subdivision (a) of Section
2 65400.

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

4 (1) A housing development contains two residential units if the
5 development proposes two new units or if it proposes to add one
6 new unit to an existing unit.

7 (2) The terms “objective zoning standards,” “objective
8 subdivision standards,” and “objective design review standards”
9 mean standards that involve no personal or subjective judgment
10 by a public official and are uniformly verifiable by reference to
11 an external and uniform benchmark or criterion available and
12 knowable by both the development applicant or proponent and the
13 public official prior to submittal. These standards may be embodied
14 in alternative objective land use specifications adopted by a city
15 or county, and may include, but are not limited to, housing overlay
16 zones, specific plans, inclusionary zoning ordinances, and density
17 bonus ordinances.

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

22 (j) Nothing in this section shall be construed to supersede or in
23 any way alter or lessen the effect or application of the California
24 Coastal Act of 1976 (Division 20 (commencing with Section
25 30000) of the Public Resources Code), except that the local
26 government shall not be required to hold public hearings for coastal
27 development permit applications for a housing development
28 pursuant to this section.

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

31 66411.7. (a) Notwithstanding any other provision of this
32 division and any local law, a city or county shall ministerially
33 approve, as set forth in this section, a parcel map or tentative and
34 final map for an urban lot split that meets all the following
35 requirements:

36 (1) The parcel map or tentative and final map subdivides an
37 existing parcel to create two new parcels of equal size.

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

- 1 (B) A local agency may by ordinance adopt a smaller minimum
2 lot size subject to ministerial approval under this subdivision.
- 3 (3) The parcel being subdivided meets all the following
4 requirements:
- 5 (A) The parcel is located within a residential zone.
- 6 (B) The parcel subject to the proposed urban lot split is located
7 within a city the boundaries of which include some portion of
8 either an urbanized area or urban cluster, as designated by the
9 United States Census Bureau, or, for unincorporated areas, a legal
10 parcel wholly within the boundaries of an urbanized area or urban
11 cluster, as designated by the United States Census Bureau.
- 12 (C) The parcel satisfies the requirements specified in
13 subparagraphs (B) to (K), inclusive, of paragraph (6) of subdivision
14 (a) of Section 65913.4.
- 15 (D) The proposed urban lot split would not require demolition
16 or alteration of any of the following types of housing:
- 17 (i) Housing that is subject to a recorded covenant, ordinance,
18 or law that restricts rents to levels affordable to persons and
19 families of moderate, low, or very low income.
- 20 (ii) Housing that is subject to any form of rent or price control
21 through a public entity's valid exercise of its police power.
- 22 (iii) A parcel or parcels on which an owner of residential real
23 property has exercised the owner's rights under Chapter 12.75
24 (commencing with Section 7060) of Division 7 of Title 1 to
25 withdraw accommodations from rent or lease within 15 years
26 before the date that the development proponent submits an
27 application.
- 28 (iv) Housing that has been occupied by a tenant in the last three
29 years.
- 30 (E) The parcel is not located within a historic district or property
31 included on the State Historic Resources Inventory, as defined in
32 Section 5020.1 of the Public Resources Code, or within a site that
33 is designated or listed as a city or county landmark or historic
34 property or district pursuant to a city or county ordinance.
- 35 (F) The parcel has not been established through prior exercise
36 of an urban lot split as provided for in this section.
- 37 (G) Neither the owner of the parcel being subdivided nor any
38 person acting in concert with the owner has previously subdivided
39 an adjacent parcel using an urban lot split as provided for in this
40 section.

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

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

5 (2) A local agency shall approve an urban lot split only if it
6 conforms to all applicable objective requirements of the
7 Subdivision Map Act (Division 2 (commencing with Section
8 66410)), except as otherwise expressly provided in this section.

9 (3) Notwithstanding Section 66411.1, a local agency shall not
10 impose regulations that require dedications of rights-of-way or the
11 construction of offsite improvements for the parcels being created
12 as a condition of issuing a parcel map or tentative and final map
13 for an urban lot split.

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

19 (2) A local agency shall not impose objective zoning standards,
20 objective subdivision standards, and objective design review
21 standards that would have the effect of physically precluding the
22 construction of two units on either of the resulting parcels.

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

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

29 (d) In addition to any conditions established in accordance with
30 subdivision (c), a local agency may require any of the following
31 conditions when considering an application for an urban lot split:

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

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

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

39 (A) The parcel is located within one-half mile walking distance
40 of either a high-quality transit corridor as defined in subdivision

1 (b) of Section 21155 of the Public Resources Code, or a major
2 transit stop as defined in Section 21064.3 of the Public Resources
3 Code.

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

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

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

10 (g) A local agency shall not require, as a condition for ministerial
11 approval of a permit application for the creation of an urban lot
12 split, the correction of nonconforming zoning conditions.

13 (h) Notwithstanding Section 65852.2, a local agency shall not
14 be required to permit an accessory dwelling unit on parcels that
15 use both the authority contained within this section and the
16 authority contained in Section 65852.21.

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

22 (j) Local agencies shall include the number of applications for
23 urban lot splits pursuant to this section in the annual housing
24 element report as required by subparagraph (I) of paragraph (2)
25 of subdivision (a) of Section 65400.

26 (k) For purposes of this section, the terms “objective zoning
27 standards,” “objective subdivision standards,” and “objective
28 design review standards” mean standards that involve no personal
29 or subjective judgment by a public official and are uniformly
30 verifiable by reference to an external and uniform benchmark or
31 criterion available and knowable by both the development applicant
32 or proponent and the public official prior to submittal. These
33 standards may be embodied in alternative objective land use
34 specifications adopted by a city or county, and may include, but
35 are not limited to, housing overlay zones, specific plans,
36 inclusionary zoning ordinances, and density bonus ordinances.

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

1 (m) Nothing in this section shall be construed to supersede or
2 in any way alter or lessen the effect or application of the California
3 Coastal Act of 1976 (Division 20 (commencing with Section
4 30000) of the Public Resources Code), except that the local
5 government shall not be required to hold public hearings for coastal
6 development permit applications for urban lot splits pursuant to
7 this section.

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

10 66452.6. (a) (1) An approved or conditionally approved
11 tentative map shall expire 24 months after its approval or
12 conditional approval, or after any additional period of time as may
13 be prescribed by local ordinance, not to exceed an additional ~~12~~
14 24 months. However, if the subdivider is required to expend two
15 hundred thirty-six thousand seven hundred ninety dollars
16 (\$236,790) or more to construct, improve, or finance the
17 construction or improvement of public improvements outside the
18 property boundaries of the tentative map, excluding improvements
19 of public rights-of-way ~~which~~ *that* about the boundary of the
20 property to be subdivided and ~~which~~ *that* are reasonably related
21 to the development of that property, each filing of a final map
22 authorized by Section 66456.1 shall extend the expiration of the
23 approved or conditionally approved tentative map by ~~36~~ 48 months
24 from the date of its expiration, as provided in this section, or the
25 date of the previously filed final map, whichever is later. The
26 extensions shall not extend the tentative map more than 10 years
27 from its approval or conditional approval. However, a tentative
28 map on property subject to a development agreement authorized
29 by Article 2.5 (commencing with Section 65864) of Chapter 4 of
30 Division 1 may be extended for the period of time provided for in
31 the agreement, but not beyond the duration of the agreement. The
32 number of phased final maps that may be filed shall be determined
33 by the advisory agency at the time of the approval or conditional
34 approval of the tentative map.

35 (2) Commencing January 1, 2012, and each calendar year
36 thereafter, the amount of two hundred thirty-six thousand seven
37 hundred ninety dollars (\$236,790) shall be annually increased by
38 operation of law according to the adjustment for inflation set forth
39 in the statewide cost index for class B construction, as determined
40 by the State Allocation Board at its January meeting. The effective

1 date of each annual adjustment shall be March 1. The adjusted
2 amount shall apply to tentative and vesting tentative maps whose
3 applications were received after the effective date of the
4 adjustment.

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

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

15 (2) The length of time specified in paragraph (1) shall be
16 extended for up to three years, but in no event beyond January 1,
17 1992, during the pendency of any lawsuit in which the subdivider
18 asserts, and the local agency ~~which~~ *that* approved or conditionally
19 approved the tentative map denies, the existence or application of
20 a development moratorium to the tentative map.

21 (3) Once a development moratorium is terminated, the map
22 shall be valid for the same period of time as was left to run on the
23 map at the time that the moratorium was imposed. However, if the
24 remaining time is less than 120 days, the map shall be valid for
25 120 days following the termination of the moratorium.

26 (c) The period of time specified in subdivision (a), including
27 any extension thereof granted pursuant to subdivision (e), shall
28 not include the period of time during which a lawsuit involving
29 the approval or conditional approval of the tentative map is or was
30 pending in a court of competent jurisdiction, if the stay of the time
31 period is approved by the local agency pursuant to this section.
32 After service of the initial petition or complaint in the lawsuit upon
33 the local agency, the subdivider may apply to the local agency for
34 a stay pursuant to the local agency’s adopted procedures. Within
35 40 days after receiving the application, the local agency shall either
36 stay the time period for up to five years or deny the requested stay.
37 The local agency may, by ordinance, establish procedures for
38 reviewing the requests, including, but not limited to, notice and
39 hearing requirements, appeal procedures, and other administrative
40 requirements.

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

11 (e) Upon application of the subdivider filed ~~prior to~~ *before* the
 12 expiration of the approved or conditionally approved tentative
 13 map, the time at which the map expires pursuant to subdivision
 14 (a) may be extended by the legislative body or by an advisory
 15 agency authorized to approve or conditionally approve tentative
 16 maps for a period or periods not exceeding a total of six years. The
 17 period of extension specified in this subdivision shall be in addition
 18 to the period of time provided by subdivision (a). ~~Prior to~~ *Before*
 19 the expiration of an approved or conditionally approved tentative
 20 map, upon an application by the subdivider to extend that map,
 21 the map shall automatically be extended for 60 days or until the
 22 application for the extension is approved, conditionally approved,
 23 or denied, whichever occurs first. If the advisory agency denies a
 24 subdivider’s application for an extension, the subdivider may
 25 appeal to the legislative body within 15 days after the advisory
 26 agency has denied the extension.

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

38 (1) The condition was one that, by its nature, necessitated action
 39 by the city or county, and the city or county either did not take the
 40 necessary action or by its own action or inaction was prevented or

1 delayed in taking the necessary action ~~prior to~~ *before* expiration
2 of the tentative map.

3 (2) The condition necessitates acquisition of real property or
4 any interest in real property from a public agency, other than the
5 city or county that approved or conditionally approved the tentative
6 map, and that other public agency fails or refuses to convey the
7 property interest necessary to satisfy the condition. However,
8 nothing in this subdivision shall be construed to require any public
9 agency to convey any interest in real property owned by it. A
10 development moratorium specified in this paragraph shall be
11 deemed to have been imposed either on the date of approval or
12 conditional approval of the tentative map, if evidence was included
13 in the public record that the public agency ~~which~~ *that* owns or
14 controls the real property or any interest therein may refuse to
15 convey that property or interest, or on the date that the public
16 agency ~~which~~ *that* owns or controls the real property or any interest
17 therein receives an offer by the subdivider to purchase that property
18 or interest for fair market value, whichever is later. A development
19 moratorium specified in this paragraph shall extend the tentative
20 map up to the maximum period as set forth in subdivision (b), but
21 not later than January 1, 1992, so long as the public agency ~~which~~
22 *that* owns or controls the real property or any interest therein fails
23 or refuses to convey the necessary property interest, regardless of
24 the reason for the failure or refusal, except that the development
25 moratorium shall be deemed to terminate 60 days after the public
26 agency has officially made, and communicated to the subdivider,
27 a written offer or commitment binding on the agency to convey
28 the necessary property interest for a fair market value, paid in a
29 reasonable time and manner.

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

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

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O