



CITY OF

NEWPORT BEACH

City Council Staff Report

November 30, 2021
Agenda Item No. 9

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Resolution No. 2021-122: Initiation of Code Amendments Related to
Senate Bill No. 9 (PA2021-277)

ABSTRACT:

For the City Council's consideration is adoption of a resolution to initiate amendments to the General Plan, Coastal Land Use Plan of the Local Coastal Program, Titles 19 (Subdivisions), 20 (Planning and Zoning), and 21 (Local Coastal Program Implementation Plan) related to the City of Newport Beach's implementation of Senate Bill No. 9 (SB 9). Effective on January 1, 2022, SB 9 will enact changes to state law that generally would allow ministerial subdivisions and the construction of up to two units for lots that are designated for single-family land use.

RECOMMENDATION:

- a) Determine this action is exempt from the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2), 15060(c)(3), and 15262 of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it will not result in a physical change to the environment, directly or indirectly; and
- b) Adopt Resolution No. 2021-122, *A Resolution of the City Council of the City of Newport Beach, California, Initiating Amendments to the General Plan, Coastal Land Use Plan of the Local Coastal Program, and Titles 19 (Subdivisions), 20 (Planning and Zoning), and 21 (Local Coastal Program Implementation Plan) of the Newport Beach Municipal Code Related to the City's Implementation of Senate Bill No. 9 (PA2021-277).*

DISCUSSION:

On September 16, 2021, Governor Gavin Newsom signed and approved Senate Bill No. 9 (SB 9) into law with an effective date of January 1, 2022 (Attachment B).

SB 9 includes provisions that would:

- 1) Allow urban lot splits (subdivisions) of a single-family zoned (or a comparable designation in a planned community zoning district) lot into two lots; and

2) Allow construction of two units on a single-family zoned property.

A subdivision followed by the development of two units on each new lot could result in a maximum of four total dwelling units.

All projects on qualifying properties processed under SB 9 must be done so ministerially, meaning there can be no public hearings and no review under the California Environmental Quality Act (CEQA). Qualifying properties include those zoned for single-family that are within an urbanized area. For Newport Beach, this generally means the R-1 Zoning Districts and planned communities where single-family residences are allowed. However, it is important to note that many planned communities have active homeowners' associations (HOAs), which have restrictions that may preclude SB 9 projects.

Development Standards

The City of Newport Beach (City) can only apply objective development standards. "Objective standards" are those that do not require any exercise in judgment to apply, including parameters like numeric setbacks, height and similar restrictions. These standards cannot be so restrictive that they prevent the construction of at least two units that are 800 square feet in size each. SB 9 includes the following mandatory development standards in the bill text:

- Cannot require more than a four-foot side or rear setback;
- Cannot require more than one parking space per unit;
- Cannot require parking for projects within one-half-mile walking distance of a high-quality transit area or major transit stops, as defined by state law, or if there is a car-share vehicle located within one block;
- Prohibits short-term rental use of any units created;
- Prohibits alteration or demolition of existing units that were utilized as rental housing within the last three years;
- Must allow the construction of attached units; however, attached units must be designed to meet all requirements for selling each unit individually; and
- No additional setback can be required for existing structures or a structure constructed in the same location and to the same dimensions as an existing structure.

The subdivision provisions of SB 9 require the City to allow a single-family zoned property to also be subdivided into two roughly proportional lots. SB 9 includes the following allowances or restrictions in the bill text:

- No resulting lot can be less than 1,200 square feet and the proportionality of the split must be no more than 40 percent and 60 percent of the original lot size;

- Cannot require dedication of right-of-way or construction of off-site improvements;
- May require that parcels have access to a public right-of-way;
- May require easements for the provision of public services and facilities;
- Can prevent accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) from being constructed on properties when a lot is both subdivided and developed with two units;
- Cannot require corrections of nonconforming zoning conditions on a property through conditions of approval or denial of a project; and
- Must require the applicant sign an affidavit stating that the applicant intends to live on one of the properties as their primary residence for at least three years after the date of the subdivision. Although, it is notable that this does not apply to an urban land trust or a qualified nonprofit.

Coastal Act Applicability

The bill does not supersede the provisions of the Coastal Act; however, the City is precluded from holding a public hearing on coastal development permits for a project subject to SB 9 approval.

Any changes made to Title 21 (Local Coastal Implementation Plan) to comply with state law will require review and approval by the California Coastal Commission.

Benefits of an Ordinance and Anticipated Timeline

If the City does not have an ordinance in place when SB 9 becomes effective on January 1, 2022, it is staff's understanding that any existing objective design standards in the R-1 (and equivalent) Zoning Districts will still be applicable unless they conflict with SB 9's mandatory standards. These existing standards include setbacks, height, floor area limitations, open volume area, third floor limitations, etc. Furthermore, although there will not be a clear process identified for ministerial approval of urban lot splits, they will not be precluded and will be processed ministerially via a parcel map in accordance with the purpose and intent of SB 9.

There are two clear benefits of having an ordinance in place: 1) the City can create and apply tailored objective design standards to better guide and regulate projects taking advantage of SB 9's provisions. For example, the City may want to consider restricted unit sizes or height limits for dwellings taking advantage of SB 9; and 2) the City will have a clearly identified process related to urban lot splits.

Given SB 9 brings with it some uncharted territory, staff will expeditiously and responsibly prepare an ordinance for consideration. At this time, it is staff's expectation that an ordinance will be brought before the City Council for adoption in early 2022.

FISCAL IMPACT:

There is no fiscal impact related to the initiation of these amendments.

ENVIRONMENTAL REVIEW:

Staff recommends the City Council find this action is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment), 15060(c)(3) (the activity is not a project as defined in Section 15378), and 15262 (planning study) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Resolution No. 2021-122
Attachment B – Senate Bill No. 9