

ORDINANCE NO. 4259

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HUNTINGTON BEACH ESTABLISHING OBJECTIVE STANDARDS FOR URBAN LOT SPLITS AND HOUSING UNITS BUILT IN ACCORDANCE WITH SENATE BILL 9, AND MAKING A FINDING OF EXEMPTION UNDER CEQA

WHEREAS, the City of Huntington Beach is a charter city and municipal corporation duly created and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs.

WHEREAS, the State of California has said that it is experiencing a housing supply crisis, which has particularly exacerbated the need for affordable homes at prices below market rates.

WHEREAS, the California Legislature passed, and the Governor signed Senate Bill 9 (SB 9), which requires local agencies, including charter cities, to ministerially approve urban lot splits and development of two residential units in single family residential zoning districts provided that the projects meet certain criteria in order try to provide more housing in the State.

WHEREAS, the City Council adopted Urgency Ordinances No 4249 and 4253, interim ordinances that established standards and procedures for projects developed according to the regulations included in SB 9, while preserving the City's ability to accept, process, and approve applications for multifamily housing in single-family residential zones, including within specific plan areas, consistent with the intent of the SB 9 legislation.

WHEREAS, the interim regulations terminate on March 2, 2023, which is 10 months and 15 days from the expiration of Interim Urgency Ordinance No. 4249, or upon the adoption of a permanent ordinance that regulates SB 9 development projects.

WHEREAS, since the passage of the interim regulations, City staff reviewed the diverse land parcels that exist throughout the City, as well as the impact of the interim objective standards.

WHEREAS, pursuant to the California State Planning and Zoning Law, the Huntington Beach Planning Commission and Huntington Beach City Council have held separate, duly noticed public hearings to consider Zoning Text Amendment No. 22-002, which adds Chapter 237, Objective Standards for SB 9 Development Projects, establishing ministerial review procedures and objective development and design standards for SB 9 projects in Residential Low Density (RL) designated areas.

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. Notwithstanding any other ordinance or provision of the Huntington Beach Municipal Code or Huntington Beach Local Coastal Program, SB 9 Development Projects, as defined herein, are prohibited unless the project complies with Chapter 237 of Title 23 of the Huntington Beach Zoning Code, amended here in its entirety, to read as follows:

“Chapter 237 OBJECTIVE STANDARDS FOR SB 9 DEVELOPMENT PROJECTS

237.02 Purpose

The provisions of this Chapter establish standards and procedures for projects developed pursuant to the regulations included in Senate Bill 9 (SB 9) in order to qualify for ministerial approval.

237.04 Definitions

The following terms used in this Chapter shall have the meanings indicated below:

“Primary Residence” means the original dwelling on the property.

“Senate Bill 9 (SB 9)” means a state law passed by the California State Senate and approved by the Governor on September 16, 2021. The legislation amends Government Code Section 66452.6 and adds Government Code Sections 65852.21 and 66411.7.

“Senate Bill 9 (SB 9) Development Project” consists of an Urban Lot Split or Single Family Residential Duplex project approval pursuant to SB 9.

“Single Family Residential Duplex” means a proposed housing development containing no more than two residential units on a single lot within an RL Low Density Residential District or other identified low density residential area located within a Specific Plan. 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.

“Gross Floor Area” means the total enclosed area of a Single Family Residential Duplex, measured to the outside face of the structural members in exterior walls, and including halls, stairways, elevator shafts at each floor level, service and mechanical equipment rooms, and habitable basement or attic areas, but excluding area for vehicle parking and loading, consistent with Huntington Beach Zoning Code Section 203.06.

“Urban Lot Split” means a parcel map subdivision permitted pursuant to SB 9 that creates no more than two new parcels of approximately equal lot area, subject to the requirements of this Chapter.

“Unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to Government Code Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Government Code Section 65852.2, or a junior accessory dwelling unit as defined in Government Code Section 65852.22.

237.06 Applicability

Notwithstanding any other provision of the Huntington Beach Municipal Code or Local Coastal Program, the provisions of this Chapter shall apply to SB 9 Development Projects. Except as expressly provided in SB 9 or in this Chapter, all other regulations of the underlying zone of a property developed pursuant to SB 9 shall apply, along with all other applicable regulations from the City of Huntington Beach Municipal Code and Local Coastal Program.

237.08 Ministerial Compliance Review Procedure

A. Proposed SB 9 Development Projects shall be subject to ministerial review by the Community Development Department to determine whether the criteria for approval have been met. The applicant shall also obtain a building permit, in addition to any and all other permits required by the Code. An Urban Lot Split shall be processed as a parcel map, but no discretionary review or public hearing shall be conducted, and with ministerial approval if all required criteria have been met.

B. Application Processing. Applicants are required to submit a General Planning application, accompanied by a fee set by City Council Resolution, and including submittal requirements designated by the Community Development Director. The applicant and the owner of a property, for which an SB 9 Development Project is sought, must provide a sworn statement affirming eligibility with SB 9 regulations.

C. Urban Lot Splits. In addition to the General Planning Application, an Urban Lot Split shall require submittal of a Tentative Parcel Map pursuant to Chapter 250. Urban Lot Splits shall be subject to all submittal requirements and findings for approval of a tentative parcel map pursuant to Title 25 and the Subdivision Map Act, except no public hearing shall be required for approval.

D. SB 9 Development Projects in the Coastal Zone. An application for any SB 9 Development Project in the coastal zone shall require submittal of a Coastal Development Permit pursuant to Chapter 245. SB 9 Development Projects shall be subject to the findings for approval of a coastal development permit and the noticing requirements in Chapter 245, except no public hearing shall be required for approval.

E. In the event that the property upon which the proposed SB 9 Development Project is located within a Homeowners Association ("HOA"), the applicant shall submit to the City written evidence of the HOA's approval of the proposed Project concurrent with their application.

F. The City, at the applicant's expense, may conduct independent inquiries and investigation to ascertain the veracity of any or all portions of the sworn statement.

237.10 General Requirements

A property owner seeking approval of an SB 9 Development Project shall comply with the following general requirements:

A. SB 9 and all objective requirements of other applicable state laws including the Subdivision Map Act.

B. The Municipal Code, including Title 17 (Buildings and Construction) and the Huntington Beach Zoning Code, except as expressly provided in SB 9 or in this Ordinance.

C. Execution and recording of a covenant, supplied by the City and subject to the approval of the City Attorney that contains the following provisions:

1. Non-residential uses on the site shall be prohibited;
2. The short term rental for periods less than 30 days of any units shall be prohibited;
3. Any subsequent Urban Lot Split of land that was previously subdivided with an Urban Lot Split shall be prohibited;
4. Except as provided in Government Code Section 66411.7 for community land trusts and qualified nonprofit corporations, the owner of the property for which an Urban Lot Split is proposed shall sign an affidavit stating that the owner intends to occupy one of the housing units as their principal residence for at least three years from the date of the approval of the Urban Lot Split;
5. Ongoing compliance with all SB 9 requirements and restrictions shall be required;
6. Access to the public right-of-way shall be maintained in perpetuity;
7. All required parking for existing units shall be maintained; and .
8. For projects involving a lot split, accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) shall be prohibited.

D. Existing Non-Conforming Structure or Use. SB 9 Development Projects shall not be located on any lot with an existing development that is non-conforming with respect to the City's current use or development standards without obtaining an approval pursuant to Chapter 236.

E. In addition to the foregoing, the City shall review each application for any other issues related to adequacy of water or sewer services, and/or the impact of the proposed SB 9 Development Project on traffic flow, or public safety. In the event that the City identifies a specific adverse issue with respect to adequate water/sewer, traffic flow, or public safety, the City may deny the Application and/or require the applicant to submit an Administrative Permit.

237.12 Objective Development Standards

All SB 9 Development Projects shall comply with the following objective standards. For any development standard not explicitly identified below, the requirements of the underlying zoning district shall apply, unless superseded by State Law.

A. Maximum Unit Size. No unit constructed pursuant to SB 9 regulations shall have a Gross Floor Area in excess of the following:

1. 800 square feet and 1 bedroom for lot sizes of less than 10,000 square feet
2. 1,600 square feet and 2 bedrooms for lot sizes of 10,000 square feet or greater

B. Maximum Height/Stories. No detached unit constructed pursuant to SB 9 regulations shall exceed sixteen (16) feet and/or exceed more than one story in height. For purposes of this Chapter, a detached unit shall be any unit that does not share at least 50 percent of one common wall with another existing unit.

C. Setbacks.

1. Any units constructed pursuant to the provisions of SB 9 shall have a minimum four foot setback from all side and rear lot lines.
2. Front setbacks shall be as required pursuant to Chapter 210.
3. No portion of any unit constructed pursuant to the provisions of SB 9, including but not limited to HVAC equipment, staircases, and patio covers, shall project into the required rear, side, or front yard setback.
4. No additional setbacks shall be required if a unit is constructed within the footprint of an existing structure on a lot.

D. Parking.

1. One enclosed or partially enclosed parking space is required for each unit created pursuant to SB 9, unless the parcel upon which the unit is created is within one-half mile walking distance of a high quality transit corridor, as defined in Public Resources Code Section 21155, or a major transit stop, as defined in Public Resources Code Section 21064.3, or there is a car share vehicle located within one block of the project.
2. Except as provided herein, parking spaces shall comply with Chapter 231 of the Zoning Code.
3. Any garage that serves and is located within the same structure as an SB 9 Development Project may be permitted no closer than four feet from a side or rear property line, or shall otherwise conform to the applicable setbacks within the zoning district.
4. New driveways proposed for parcels created by SB 9 Development Projects on interior lots without alley access are limited to a maximum width of 10 feet if the proposed frontage of the new parcel is 30 feet or less.

E. Design of Unit.

1. Any unit constructed pursuant to the provisions of SB 9 shall be constructed upon a permanent foundation.
2. Any unit of an SB 9 Development Project shall include sufficient permanent provisions for living, sleeping, eating, cooking, and sanitation, including but not limited to washer dryer hookups and kitchen facilities.
3. Any unit of an SB 9 Development project shall be connected to the public sewer, and that connection shall be subject to a connection fee, or capacity charge, or both.
4. Any unit of an SB 9 Development Project shall have separate utility connections and separate utility meters. Non-public utility electrical elements such as wires, conduits, junction boxes, transformers, ballasts, and switch and panel boxes shall be concealed from view from adjacent public rights-of-way.

5. Any unit of an SB 9 Development Project shall be constructed with the same architectural style, color, roof pitch and materials as the existing residential dwelling. In addition, and except as provided in this Section, all units shall be designed and sited to have the same architectural style, roof pitch, color, and materials.
6. All flashing, sheet metal vents, and pipe stacks shall be painted to match the adjacent roof or wall material.
7. Any unit of an SB 9 Development Project shall include solar panels.
8. Any unit of an SB 9 Development Project shall not include roof decks or balconies above or upon the unit.
9. Refuse storage areas shall be enclosed or semi-enclosed in a structure or fenced area and concealed from view from adjacent public rights-of-way and located outside of required setbacks.

F. Additional Standards Relating to Projects in the Coastal Zone. In addition to the above, SB 9 Development Projects located within the Coastal Zone shall be designed and sited to:

1. Protect public access to and along the shoreline areas.
2. Protect public views to and along the ocean and scenic coastal areas.
3. Protect sensitive coastal resources.
4. Minimize and, where feasible, avoid shoreline hazards.

G. Affordable Rental Rate. Applicants that voluntarily provide SB 9 units rented or leased at a maximum rate affordable to low income tenants, shall be eligible for additional square footage up to 1,600 square feet and 2 bedrooms and maximum height of 2 stories per unit. Upon request from the City, the property owner shall furnish a copy of the rental or lease agreement of any affordable unit constructed pursuant to this section.

H. Additional Standards Relating to Urban Lot Splits. In addition to the above, Urban Lot Splits shall comply with the following standards:

1. No flag lots shall be created as a result of an Urban Lot Split if the subject property is adjacent to an alley, located on a corner, or on a through lot. Provided however, that this provision shall not apply to through lots abutting arterial highways.
2. The width of any lot resulting from an Urban Lot Split shall not be less than 20 feet wide.
3. The proposed parcel map shall demonstrate ability to access the public right-of-way in perpetuity.
4. Development of both lots shall occur concurrently with the Urban Lot Split.

5. Accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) shall be prohibited.

237.14 Exceptions

The Community Development Director shall approve an exception to any of the standards specified in this Chapter upon determining that complying with the standard would physically preclude the construction of up to two residential units per lot or would physically preclude either of the two residential units from being 800 square feet in floor area.

237.16 Denial

The Community Development Director may deny an application for an SB 9 Development Project upon making both of the following findings in writing based on the preponderance of the evidence:

1. The proposal would have a specific, adverse impact, as defined and determined in Government Code Section 65589.5(d)(2).
2. There is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact.

237.18 Enforcement and Remedies

A. Criminal Fines and Penalties. Any person responsible for violating any provision of this Chapter is guilty of an infraction or a misdemeanor at the discretion of the City Attorney and/or District Attorney. Upon conviction, the person shall be punished as prescribed in Chapter 1.16.

B. Administrative Fines and Penalties. Whenever an officer charged with the enforcement of any provision of this Municipal Code determines that a violation of this Chapter has occurred, the officer shall have the authority to issue an administrative citation to any person responsible for the violation in accordance with Chapter 1.16.

C. Public Nuisance and Lien on Property. Any use or condition caused, or permitted to exist, in violation of any provision of this Chapter shall be, and is hereby declared to be, a public nuisance and may be summarily abated by the City pursuant to Code of Civil Procedure Section 731 or any other remedy available at law. In accordance with Chapter 17.10, the City may also collect any fee, cost, or charge incurred in the abatement of such nuisance by making the amount of any unpaid fee, cost or charge a lien against the property that is the subject of the enforcement activity.

D. Civil Action. In addition to any other enforcement permitted by the City's Zoning and/or Municipal Codes, the City Attorney may bring a civil action for injunctive relief and civil penalties against any person who violates any provision of this Chapter. In any civil action that is brought pursuant to this Chapter, a court of competent jurisdiction may award civil penalties and costs to the prevailing party.

E. Revocation. Any violation of this Chapter may result in revocation of SB 9 Development Project permit.

Use of any one or more of these remedies shall be at the sole discretion of the City and nothing in this Section shall prevent the City from initiating civil, criminal or other legal or equitable proceedings as an alternative to any of the proceedings set forth above."

SECTION 2. CEQA. This Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the State CEQA Guidelines, and the environmental regulations of the City. The City Council hereby finds and determines that the Ordinance is exempt from the CEQA pursuant to Government Code Section 65852.21(j) effective January 1, 2022. Furthermore, this Ordinance is exempt from CEQA based on the following reasons. This Ordinance is not a project within the meaning of Section 15378 of the State CEQA Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. This Ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power. This Ordinance is not subject to CEQA under the general rule in CEQA Guidelines Section 15061(b)(3) that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Any development that would be contemplated under this Ordinance must be treated ministerially, and any such projects would be exempt from the environmental review requirements. For the reasons set forth herein above, it can be seen with certainty that there is no possibility that this Ordinance will have a significant effect on the environment.

SECTION 3. Effective Date. This Ordinance shall become effective 30 days after its adoption.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance and shall not affect other provisions of this Ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this Ordinance are severable. The City Council hereby declares it would have adopted this Ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 5. Certification and Publication. The City Clerk shall certify to the adoption of this Ordinance and post or publish this Ordinance in the manner required by law.

PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the _____ day of _____, 2022.

Mayor

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney *mw*

REVIEWED AND APPROVED:

INITIATED AND APPROVED:

City Manager

Shirley N. Fowler

Director of Community Development