

**CITY OF DANA POINT
PLANNING COMMISSION
AGENDA REPORT**

DATE: DECEMBER 13, 2021

TO: DANA POINT PLANNING COMMISSION

FROM: COMMUNITY DEVELOPMENT DEPARTMENT
BRENDA WISNESKI, DIRECTOR OF COMMUNITY DEVELOPMENT

SUBJECT: ZONE TEXT AMENDMENT ZTA21-001 TO REGULATE SINGLE FAMILY RESIDENTIAL DUPLEXES AND MUNICIPAL CODE AMENDMENT TO REGULATE URBAN LOT SPLITS PURSUANT TO CALIFORNIA SENATE BILL 9 (SB9).

RECOMMENDATION: That the Planning Commission adopt the attached Draft Resolution recommending the City Council approve Zone Text Amendment ZTA21-0001 (Action Document 1).

APPLICANT: City of Dana Point

REQUEST: A request to modify the Dana Point Zoning Code to establish regulations pertaining to Single Family Residential Duplexes, and Urban Lot Splits consistent with State Law.

LOCATION: Citywide

NOTICES: A 1/8th page notice was published in the Dana Point News on December 3, 2021, and notices were posted on December 3, 2021, at Dana Point City Hall, the Dana Point post office, and the Capistrano Beach post office.

ENVIRONMENTAL: The proposed amendments are to implement Senate Bill 9 and are not considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code and are categorically exempt per California Environmental Quality Act (CEQA) Guidelines Section 15303.

ISSUES

1. Is the proposal consistent with the City's adopted General Plan?

BACKGROUND

The Governor signed California Senate Bill 9 (SB9) into law on September 16, 2021,

which goes into effect January 1, 2022. The bill, among other things, will require local governments to approve a housing development containing no more than two units within a single-family residential zone ministerially, without discretionary review or public hearing, if the proposed development meets certain criteria. Additionally, SB9 requires the City to ministerially approve a parcel map to subdivide an existing parcel in a single family residential zone into two new parcels, referred to as an “urban lot split”.

In summary, the bill minimizes the restrictions and limitations of traditional single-family zoning by permitting, by-right single-family lots to be split into separate parcels, and for up to two units to be constructed on either existing or newly created parcel. Potential application of SB9 is provided below:

- Where a lot is not split, up to two units may be allowed on a parcel; and each of those units may have an ADU or JADU for a total of four units.
- Where a lot is split, each parcel is limited to two units, inclusive of any ADU or JADU, resulting in a total of four units. A lot split by SB9, may not be split again, nor may an adjacent property under the same ownership be split.

DISCUSSION

Given the relatively limited guidance on design and development standards in SB9, establishing local regulations is necessary to ensure these units and lots fit as well as possible into existing single-family neighborhoods, within the strict parameters of the State Law.

The City may adopt an ordinance establishing objective design and development standards to the extent that those standards do not preclude the construction of two units of at least 800 square feet each. Accordingly, a draft ordinance has been developed for the Planning Commission’s consideration which codifies objective standards which are summarized below.

Single Family Residential Duplex Standards

- Size – Maximum 800 square feet
- Setbacks – 4 feet side and rear; front setback per zoning district
- Height – 16-feet; one story
- Site Development Permit required if existing structure nonconforming. Not permitted if nonconforming use.
- Shall not require demolition of affordable units, or more than 25% of the existing unit exterior walls.
- One off street parking space required in accordance with Zoning Code. No areas within the City satisfy the criteria specified in SB9 to exempt the required parking.
- 10-foot building separation
- Separate utility and meter connections

- Deed restriction required:
 - a) shall not be rented for less than 30 days,
 - b) either the Single-Family Residential Duplex or the primary dwelling shall be occupied by the owner of the parcel,
 - c) shall be occupied by very-low or low household in perpetuity, and
 - d) the deed restriction runs with the land.

Urban Lot Split

- Similar to the provision of the Single-Family Residential Duplex
- Only requires owner occupancy for three years (limit per SB9)
- Not subject to further subdivision
- No more than 2 parcels
- One parcel shall not be smaller than 40 percent of the original parcel
- No smaller than 1,200 square feet
- Area shall not include coastal bluffs or area zoned Conservation
- Lot lines:
 - Flag lots not permitted
 - Lot width shall comply with the requirements of the Zoning District, no less than 50-foot frontage
 - Each parcel shall provide direct vehicle access to right of way with compliant driveways
 - Interior lot lines shall be straight and perpendicular to the front property line, no zigzags
 - Shall not render existing structure nonconforming, or increase the nonconformity of an existing nonconforming structure

CONCLUSION

Staff recommends the Planning Commission consider public testimony and adopt a resolution recommending the City Council adopt the proposed ZTA to implement California Senate Bill 9 and establish objective standards that would be applicable to units proposed under the provision of this new state law.



Brenda Wisneski, Director
Community Development Department

Action Document:

1. Draft Planning Commission Resolution No. 21-12-13-XX

Supporting Document:

2. Senate Bill 9 – Housing Development

ACTION DOCUMENT 1: Draft Planning Commission Resolution No. 21-12-13-XX

RESOLUTION NO. 21-12-13-XX

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF DANA POINT, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVE ZONE TEXT AMENDMENT ZTA21091 TO ADD CHAPTER 9.72 TO CITY OF DANA POINT MUNICIPAL CODE REGULATING SINGLE FAMILY RESIDENTIAL DUPLEXES, AND ADD CHAPTER 7.37 TO THE CITY OF DANA POINT MUNICIPAL CODE REGULATING URBAN LOT SPLITS PURSUANT TO CALIFORNIA SENATE BILL 9 (SB9)

Applicant: City of Dana Point

The Planning Commission of the City of Dana Point does hereby resolve as follows:

WHEREAS, in 1993, the City of Dana Point approved, and the California Coastal Commission certified, the Zoning Ordinance of the City of Dana Point; and

WHEREAS, on September 16, 2021, California Senate Bill 9 (SB9) was approved by the Governor that requires local governments to approve a housing development containing no more than two units within a single-family residential zone ministerially, without discretionary review or public hearing, if the proposed development meets certain criteria. Additionally, SB9 requires the City to ministerially approve a parcel map to subdivide an existing parcel in a single family residential zone into two new parcels; and

WHEREAS, the City seeks to update the Dana Point Municipal Code by adding Chapters 9.72 to establish regulations pertaining to single family residential duplexes and adding Chapter 7.37 to establish regulations pertaining to urban lot splits pursuant to SB9; and

WHEREAS, the proposed amendments are identified as Exhibit A, attached hereto and made a part of this Resolution; and

WHEREAS, the Planning Commission held a duly noticed public hearing as prescribed by law on December 13, 2021, to consider said these amendments; and

WHEREAS, at said public hearing, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Planning Commission considered all factors relating to the proposed Municipal Code amendment.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Dana Point as follows:

PLANNING COMMISSION RESOLUTION NO. 21-12-13-XX
ZTA21-0001
PAGE 2

- A. That the above recitations are true and correct and incorporated herein by reference.
- B. Based on the evidence presented at the public hearing, the Planning Commission adopts the following findings and recommends to the City Council adopt the proposed amendments.
- 1) The proposed amendment is consistent with the Dana Point General Plan and Local Coastal Program and state law. That the proposed action complies with all other applicable requirements of State law and local Ordinances.
 - 2) The proposed amendments are to implement Senate Bill 9 and are not considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code and are categorically exempt per California Environmental Quality Act (CEQA) Guidelines Section 15303.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the Planning Commission of the City of Dana Point, California, held on this 13th day of December, 2021, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Eric Nelson, Chair
Planning Commission

ATTEST:

Brenda Wisneski, Director
Community Development Department

EXHIBIT A

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF THE CITY OF DANA POINT CALIFORNIA, ADDING CHAPTER 9.72 TO THE CITY OF DANA POINT MUNICIPAL CODE REGULATING SINGLE FAMILY RESIDENTIAL DUPLEXES, ADDING CHAPTER 7.37 OF THE CITY OF DANA POINT MUNICIPAL CODE REGULATING URBAN LOT SPLITS.

WHEREAS, on September 16, 2021, the Governor signed into law Senate Bill 9 ("SB 9"), which among other things, allows for the ministerial approval of single family residential duplexes and urban lot splits; and

WHEREAS, SB 9 allows local agencies to adopt an ordinance imposing objective zoning standards, subdivision standards, and development standards that do not otherwise conflict with State Law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF THE CITY OF DANA POINT, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct, and incorporated herein as though set forth in full.

SECTION 2. Chapter 9.72 Single Family Residential Duplexes, is added to the City of Dana Point's Zoning Code to read as follows:

9.72 SINGLE FAMILY RESIDENTIAL DUPLEXES

- | | |
|----------------|--|
| Sec. 9.72.001. | Purpose. |
| Sec. 9.72.002. | Definitions. |
| Sec. 9.72.003. | Permit Procedures. |
| Sec. 9.72.004. | Objective Development Standards. |
| Sec. 9.72.005. | Accessory Dwelling Unit Ineligibility. |
| Sec. 9.72.006. | Enforcement and Remedies. |

Sec. 9.72.001. Purpose.

The purpose of this Chapter is to facilitate the increased production of housing developments containing no more than two residential units within a single-family residential zone ("Single Family Residential Duplexes"), and to provide reasonable regulations for their development. Single Family Residential Duplexes can contribute needed housing to the community's housing stock and promote housing opportunities for persons from a range of socioeconomic backgrounds who wish to reside in the City. In

addition, the regulations in this ordinance are intended to promote the goals and policies of the City's General Plan and comply with requirements codified in the State Planning and Zoning Law related to housing development containing no more than two residential units within a single-family residential zone.

Sec. 9.72.002. Definitions.

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

The term "Single Family Residential Duplex" shall mean a proposed housing development containing no more than two residential units on a single lot within a single-family residential zone. 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. The term Single Family Residential Duplex does not include a duplex that is located in any zoning district in the City.

The term "Total Floor Area" shall mean the total floor area of the Single Family Residential Duplex, inclusive of all habitable areas and non-habitable areas of the structure, including but not limited to stairways, hallways, basements, attics, garages, storage areas, restrooms, and any other accessory spaces, consistent with Dana Point Zoning Code section 9.75.060.

The term "Unit" shall mean 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.

Sec. 9.72.003. Permit Procedures.

- A. Permits: All Single Family Residential Duplexes require a Single Family Residential Duplex permit. The applicant shall also obtain any and all other permits required by the Code, including but not limited to a building permit as required by Title 8.
- B. Application Processing: An application for a Single Family Residential Duplex Permit shall be made on forms provided by the City's Community Development Department and be submitted with any applicable fees. The application shall include all information needed to determine compliance with this chapter. The application fee shall be established by resolution of the City Council.
- C. Application Review:

1. The Community Development Director or his/her designee will review and approve complete applications for Single Family Residential Duplex permits for compliance with the requirements of this Chapter, the underlying development standards in the zoning district in which it is located, as well as any applicable overlay district. The Single Family Residential Duplex Permit application shall be considered ministerially without any discretionary review or a public hearing.
2. The City may deny a Single Family Residential Duplex Permit application if it fails to comply with the requirements of this Chapter, the underlying development standards in the zoning district in which it is located, as well as any applicable overlay district. In addition to the foregoing, the Community Development Director or his/her designee may deny a Single Family Residential Duplex Permit application if he/she makes a written finding, based upon a preponderance of the evidence, that the proposed Single Family Residential Duplex would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, 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. Notwithstanding the foregoing, an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
3. Except as otherwise provided in this Chapter, the construction of a Single Family Residential Duplex shall be subject to any applicable fees adopted pursuant to the requirements of Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

Sec. 9.72.004. Objective Development Standards.

The development standards set forth below shall apply to all Single Family Residential Duplexes. For any development standard not explicitly identified below, the requirements of the underlying zoning district shall apply, unless superseded by State Law.

- A. **Location & Zoning Requirements.** Single Family Residential Duplexes shall only be allowed in single family residential zoning district, in accordance with the permit and development standards described in this Section, subject to the exceptions set forth below.
 1. **Farmland.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located upon either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and

monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.

2. **Wetlands.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located upon wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
3. **Fire Zones.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by the City, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
4. **Hazardous Waste Site.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located upon a hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
5. **Earthquake Zone.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.
6. **Flood Plain Areas.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located within a special flood hazard area subject to inundation by the 1 percent

annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. Notwithstanding the foregoing, a Single Family Residential Duplex may be located on a site described in this subparagraph if either of the following are met: (i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or (ii) the site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations, and complies with the City's regulations related to its City's Flood Plain Overlay Districts.

7. **Regulatory Floodways.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the applicant has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations, and complies with the City's regulations related to its City's Flood Plain Overlay Districts.
8. **Conservation Lands.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located upon lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), other adopted natural resource protection plan, or that is otherwise subject to a conservation easement.
9. **Protected Habitat.** Pursuant to Government Code sections 65852.2(a)(2) and 65913.4(a)(6), Single Family Residential Duplexes shall not be located upon habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).
10. **Coastal Overlay District.** Pursuant to Government Code 65852.21(k), nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20

(commencing with Section 30000) of the Public Resource Code). As such, in accordance with the City's Certified Local Coastal Program, no Single Family Residential Duplexes shall be located within the City's Coastal Overlay District without obtaining a Coastal Development Permit and otherwise complying with all provisions of the City's Local Coastal Program related to Duplexes..

11. **Existing Non-Conforming Structure or Use.** No Single Family Residential Duplex shall be constructed on any lot which has an existing development constructed upon it, which is non-conforming with respect to the City's current development standards without obtaining a Site Development Permit pursuant to Section 9.71. No Single Family Residential Duplex shall be constructed on any lot which has an existing development constructed upon it, which is non-conforming with respect to use.

12. **Historic District or Property.** No Single Family Residential Duplex shall be located within a historic district or upon property included on the State Historic Resources Inventory, as defined in Section 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.

B. **Restrictions Related to Existing Affordable Housing and Rentals.** Except as provided herein, a Single Family Residential Duplexes shall not require demolition or any alteration of any of the following types of housing:

1. Existing housing upon the lot which the Single Family Residential Duplex is proposed 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.
2. Existing housing upon the lot which the Single Family Residential Duplex is proposed that is subject to any form of rent or price control through the City's valid exercise of its police power.
3. Existing housing upon the lot which the Single Family Residential Duplex is proposed that has been occupied by a tenant in the last three years. In the event that a tenant has not occupied housing upon which the Single Family Duplex is proposed within the last three years, the construction of a proposed Single Family Residential Duplex shall not require the demolition of more than 25 percent of the existing housing exterior structural walls.
4. A Single Family Residential Duplex shall not be located upon a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title

1 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the applicant submits an application.

- C. **No More Than Two Dwelling Units Per Parcel.** No more than two dwelling units (whether primary, accessory, or single family residential duplex) shall be allowed per parcel. In no event shall a Single Family Residential Duplex permit application be used to construct more than two dwelling units per parcel.
- D. **Sale, Rental, and Occupancy of Units.** Single Family Residential Duplexes shall not be rented for less than thirty (30) days. Either the Single Family Residential Duplex or the primary dwelling located on the parcel shall be occupied by the owner of the parcel.
- E. **Deed Restriction.** A Deed Restriction prepared by the City shall be recorded on the subject property prior to issuance of the certificate of occupancy for the Single Family Residential Duplex stating that (1) the Single Family Residential Duplex shall not be rented for less than 30 days, (2) either the Single Family Residential Duplex or the primary dwelling located on the parcel shall be occupied by the owner of the parcel, (3) the Single Family Residential Duplex shall be occupied by very-low to low-income households in perpetuity; (4) no more than two dwelling units (whether primary, accessory, or single family residential duplex) shall be constructed on the parcel; and (5) the deed restriction runs with the land and each provision therein may be enforced against future owners of the property.
- F. **Required Setbacks.** All Single Family Residential Duplexes shall strictly comply with at least a four (4) foot side setback and at least a four (4) foot rear yard setback. All Single Family Residential Duplexes must also strictly comply with the front yard setback requirement of the underlying zoning district in which it is located. No portion of a Single Family Residential Duplex, including but not limited to HVAC equipment, staircases, and patio covers, shall project into the required rear, side, or front yard setback. No setback requirement shall be required for a legally existing detached accessory structure, which is converted into a Single Family Residential Duplex. However, the converted Single Family Residential Duplex must comply with all of the other requirements of this Section, including but not limited to the size, height, building separation, parking and permitting requirements set forth herein.
- G. **Maximum Height/Stories.** All Single Family Residential Duplexes shall be subject to a height limitation of sixteen (16) feet, and shall be limited to one story.
- H. **Building Separation Requirements.** All Single Family Residential Duplexes shall comply with the City's building separation requirements as set forth in Chapters 9.09.
- I. **Single Family Residential Duplex Size Requirements.** For all Single Family Residential Duplexes, the Total Floor Area shall not exceed 800 square feet and

1 bedroom.

J. Additional Requirements.

1. All Single Family Residential Duplexes shall be constructed upon a permanent foundation.
2. Single Family Residential Duplexes shall include sufficient permanent provisions for living, sleeping, eating, cooking, and sanitation, including but not limited to washer dryer hookups and kitchen facilities.
3. All Single Family Residential Duplexes must have separate utility connections and separate utility meters.
4. Each Single Family Residential Duplex unit shall be connected to the public sewer, and that connection shall be subject to a connection fee, or capacity charge, or both.
5. All Single Family Residential Duplexes must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code.
6. All Single Family Residential Duplexes shall be architecturally consistent with the primary residential dwelling. In addition, all Single Family Duplexes shall be designed and sited to: (i) be similar to the primary dwelling with respect to architectural style, roof pitch, color, and materials; (ii) protect public access to and along the shoreline areas; (iii) protect public views to and along the ocean and scenic coastal areas; (iv) protect sensitive coastal resources; and (v) minimize and, where feasible, avoid shoreline hazards.
7. Solar panels shall be required for any Single Family Residential Duplexes.
8. No roof decks or balconies shall be constructed above or upon a Single Family Residential Duplex.
9. Single Family Residential Duplexes shall only be located in the rear ½ of the parcel.
10. In the event that the property upon which the Single Family Duplex is proposed is located within a Homeowners Association ("HOA"), the applicant shall submit to the City written evidence of the HOA's approval of the Single Family Duplex concurrent with their Single Family Duplex permit application.
11. Single Family Residential Duplexes shall only be occupied by very-low to

low-income households in perpetuity. A deed restriction shall be recorded prior to issuance of certificate of occupancy stating that, the Single Family Residential Duplex shall be occupied by very-low to low-income households in perpetuity. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements.

12. In no event shall Single Family Duplexes be converted into condominiums.

K. **Parking Requirements.** Except as provided below, Single Family Residential Duplexes shall meet the following parking standards:

1. At least one (1) off street, covered, non-tandem parking space shall be provided per Single Family Residential Duplex.
2. Parking spaces shall comply with Zoning Code Chapter 9.35, except as may be permitted in this Section, and be provided on the same lot as the Single Family Residential Duplex.
3. The parking space(s) for the Single Family Residential Duplex shall be in addition to the parking required for the primary residential dwelling unit(s).
4. The foregoing parking standards shall not be imposed on an Single Family Residential Duplex in any of the following circumstances:
 - a. The Single Family Residential Duplex is located within one-half (1/2) 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
 - b. The Single Family Residential Duplex is located within one block of a car share vehicle area.

L. **Associated Permits.** If an application for a Single Family Residential Duplex triggers the requirement for a discretionary or ministerial permit other than a Single Family Residential Duplex Permit and/or a building permit (including but not limited to a Site Development Permit, Coastal Development Permit and/or Conditional Use Permit), those associated permits must be applied for and obtained prior to application for an Single Family Residential Duplex Permit. The process for obtaining the associated permit(s) shall be as set forth in Title 9 of the Dana Point Zoning Code.

Sec. 9.72.005. Accessory Dwelling Unit Ineligibility.

Parcels containing both a Single Family Residential Duplex as that term is defined in

Chapter 9.72 and an Urban Lot Split as that term is defined in Chapter 7.37 shall be ineligible for an accessory dwelling unit or junior accessory dwelling unit permit under Chapter 9.07.210. Operation of an accessory dwelling unit or junior accessory dwelling unit in violation of this Section shall be a violation of this Chapter and grounds for enforcement.

Sec. 9.72.006. 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.

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 1.10.

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 6.14, 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. Single Family Residential Duplex Permit Revocation. Any violation of this Chapter may result in revocation of a Single Family Residential Duplex 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 3. Chapter 7.37, Urban Lot Splits, is added to the City of Dana Point's Zoning Code to read as follows:

7.37 URBAN LOT SPLITS

Sec. 7.37.001.	Purpose.
Sec. 7.37.002.	Definitions.
Sec. 7.37.003.	Permit Procedures.
Sec. 7.37.004.	Objective Development Standards.
Sec. 7.37.005.	Enforcement and Remedies.

Sec. 7.37.001. Purpose.

The purpose of this Chapter is to facilitate the increased production of housing developments contained within a single-family residential zone, and to provide reasonable regulations for the use of Urban Lot Splits and the dwelling units constructed upon parcels that have been created pursuant to an Urban Lot Split. In addition, the regulations in this ordinance are intended to promote the goals and policies of the City's General Plan and comply with requirements codified in the State Planning and Zoning Law, including Government Code Section 66411.7.

Sec. 7.37.002. Definitions.

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

The term "Urban Lot Split" shall mean a subdivision of an existing legal parcel in a single family residential zone to create no more than two new parcels of approximately equal lot area, subject to the requirements of this Section. For the purposes of this Section, the Urban Lot Split subdivision shall be in accordance with the Subdivision Map Act and City of Dana Point requirements for a parcel map, including a Tentative Parcel Map, per Title 7 of the Dana Point Municipal Code.

For the purposes of this Section, the term "unit" shall mean 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.

Sec. 7.37.003. Permit Procedures.

- A. Permits: All Urban Lot Splits require a Urban Lot Split Permit. The applicant shall also obtain a tentative parcel map, a final parcel map, and building permit(s), in addition to any and all other permits required by the Code.
- B. Application Processing: An application for an Urban Lot Split Permit shall be made on forms provided by the City's Public Works Department and be submitted with any applicable fees. The application shall include all information needed to determine compliance with this chapter, including but not limited to a parcel map for an urban lot split prepared by a registered civil engineer or licensed land

surveyor in accordance with Government Code sections 66444 – 66450 and this Chapter. The application for an Urban Lot Split shall be submitted in conjunction with building permits for residential development on the resulting parcels. Development on the resulting parcels is limited to the residential development approved in the concurrently submitted building permit applications. The application fee shall be established by resolution of the City Council.

C. Application Review:

1. The Public Works Director or his/her designee will review and approve complete applications for Urban Lot Split permits for compliance with the requirements of this Chapter, the underlying development standards in the zoning district in which it is located, as well as any applicable overlay district. The Urban Lot Split Permit application shall be considered ministerially without any discretionary review or a public hearing.
2. The City may deny a Urban Lot Split Permit application if it fails to comply with the requirements of this Chapter, the underlying development standards in the zoning district in which it is located, as well as any applicable overlay district. In addition to the foregoing, the Public Works Director or his/her designee may deny a Urban Lot Split permit application if he/she makes a written finding, based upon a preponderance of the evidence, that the proposed Urban Lot Split would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 65589.5 of the Government Code, 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. Notwithstanding the foregoing, an application shall not be rejected solely because it proposes adjacent or connected structures provided that the structures meet building code safety standards and are sufficient to allow separate conveyance.
3. Except as otherwise provided in this Chapter, the construction of a Urban Lot Split shall be subject to any applicable fees adopted pursuant to Government Code, Title 7, Division 1, Chapter 5 (commencing with Section 66000) and Chapter 7 (commencing with Section 66012).

Sec. 7.37.004. Objective Development Standards.

The development standards set forth below shall apply to all Urban Lot Split. For any development standard not explicitly identified below, the requirements of the underlying zoning district shall apply, unless superseded by State Law.

- A. Location & Zoning Requirements. Urban Lot Split shall only be allowed in single family residential zoning district, in accordance with the permit and development standards described in this Section, subject to the exceptions set forth below.

1. **Farmland.** Pursuant to Government Code sections 66411.7(a)(2)(C) and 65913.4(a)(6), Urban Lot Splits shall not be allowed upon either prime farmland or farmland of statewide importance, as defined pursuant to United States Department of Agriculture land inventory and monitoring criteria, as modified for California, and designated on the maps prepared by the Farmland Mapping and Monitoring Program of the Department of Conservation, or land zoned or designated for agricultural protection or preservation by a local ballot measure that was approved by the voters of that jurisdiction.
2. **Wetlands.** Pursuant to Government Code sections 66411.7(a)(2)(c) and 65913.4(a)(6), Urban Lot Splits shall not be allowed upon lands that are considered wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).
3. **Fire Zones.** Pursuant to Government Code sections 66411.7(a)(2)(C) and 65913.4(a)(6), Urban Lot Splits shall not be allowed upon lands located within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Section 51178, or within a high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection pursuant to Section 4202 of the Public Resources Code. This subparagraph does not apply to sites excluded from the specified hazard zones by the City, pursuant to subdivision (b) of Section 51179, or sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development.
4. **Hazardous Waste Site.** Pursuant to Government Code sections 66411.7(a)(2)(C) and 65913.4(a)(6), Urban Lot Splits shall not be located upon a hazardous waste site that is listed pursuant to Section 65962.5 or a hazardous waste site designated by the Department of Toxic Substances Control pursuant to Section 25356 of the Health and Safety Code, unless the State Department of Public Health, State Water Resources Control Board, or Department of Toxic Substances Control has cleared the site for residential use or residential mixed uses.
5. **Earthquake Zone.** Pursuant to Government Code sections 66411.7(a)(2)(C) and 65913.4(a)(6), Urban Lot Splits shall not be located lands within a delineated earthquake fault zone as determined by the State Geologist in any official maps published by the State Geologist, unless the development complies with applicable seismic protection building code standards adopted by the California Building Standards Commission under the California Building Standards Law (Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code), and by any local building department under Chapter 12.2 (commencing with Section 8875) of Division 1 of Title 2.

6. **Flood Plain Areas.** Pursuant to Government Code sections 66411.7(a)(2)(c) and 65913.4(a)(6), Urban Lot Splits shall not be located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency. Notwithstanding the foregoing, a Single Family Residential Duplex may be located on a site described in this subparagraph if either of the following are met: (i) The site has been subject to a Letter of Map Revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction; or (ii) the site meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program pursuant to Part 59 (commencing with Section 59.1) and Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations, and complies with the City's regulations related to its City's Flood Plain Overlay Districts.
7. **Regulatory Floodways.** Pursuant to Government Code sections 66411.7(a)(2)(C) and 65913.4(a)(6), Urban Lot Splits shall not be located within a regulatory floodway as determined by the Federal Emergency Management Agency in any official maps published by the Federal Emergency Management Agency, unless the applicant has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations, and complies with the City's regulations related to its City's Flood Plain Overlay Districts.
8. **Conservation Lands.** Pursuant to Government Code sections 66411.7(a)(2)(C) and 65913.4(a)(6), Urban Lot Splits shall not be located upon lands identified for conservation in an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code), habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), other adopted natural resource protection plan, or that is otherwise subject to a conservation easement.
9. **Protected Habitat.** Pursuant to Government Code sections 66411.7(a)(2)(C) and 65913.4(a)(6), Urban Lot Splits shall not be located upon habitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies, fully protected species, or species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code), or the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code).

10. **Coastal Overlay District.** Pursuant to Government Code 66411.7(o), nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resource Code). As such, in accordance with the City's Certified Local Coastal Program, no Urban Lot Split shall be located within the City's Coastal Overlay District without obtaining a Coastal Development Permit and otherwise complying with all provisions of the City's Local Coastal Program related to Urban Lot Splits..

11. **Existing Non-Conforming Structure or Use.** No Urban Lot Split shall be located on any lot which has an existing development constructed upon it, which is non-conforming with respect to the City's current development standards without obtaining a Site Development Permit pursuant to Section 9.71. No Urban Lot Split shall be permitted on lots with nonconforming uses.

12. **Historic District or Property.** No Urban Lot Split shall be located within a historic district or upon property included on the State Historic Resources Inventory, as defined in Section 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.

B. **Restrictions Related to Existing Affordable Housing and Rentals.** Except as provided herein, an Urban Lot Split shall not require demolition or any alteration of any of the following types of housing:

1. Existing housing upon the lot which the Urban Lot Split is proposed 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.
2. Existing housing upon the lot which the Urban Lot Split is proposed that is subject to any form of rent or price control through the City's valid exercise of its police power.
3. Existing housing upon the lot which the Urban Lot Split is proposed that has been occupied by a tenant in the last three years.
4. An Urban Lot Split shall not be located upon a parcel on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 of the Government Code to withdraw accommodations from rent or lease within 15 years before the date that the applicant submits an application.

C. **Sale, Rental, and Occupancy of Units.** The dwelling units constructed upon

parcel(s) subject to or created by an Urban Lot Split shall not be rented for less than thirty (30) days. In addition, the Applicant shall occupy one of the dwelling units created by the Urban Lot Split for a period of three years from the date of the issuance of the last certificate of occupancy for either of the two parcels as their primary residence.

- D. **Deed Restriction.** A Deed Restriction prepared by the City shall be recorded on the subject property(ies) prior to issuance of the Urban Lot Split Permit stating that any (1) dwelling constructed upon property subject to the Urban Lot Split shall not be rented for less than 30 days; (2) the applicant shall occupy one of the dwelling units constructed upon a parcel created by an Urban Lot Split for a period of three years from the issuance of the last certificate of occupancy for the Urban Lot Split as his or her primary residence; (3) the parcel was created by an Urban Lot Split pursuant to SB 9 and is not subject to further subdivision; (4) the dwelling unit(s) constructed upon the lots subject to an Urban Lot Split shall be occupied by very-low to low-income households in perpetuity; and (5) the deed restriction runs with the land and each provision therein may be enforced against future owners of the property.
- E. **Parcel Size.** The parcel map submitted as part of an Urban Lot Split Application shall subdivide an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision. In addition to the foregoing, both newly created parcels shall be no smaller than 1,200 square feet. The following are excluded from the calculation of the parcel size for purposes of this Section: (1) areas of lots that contain slopes greater than 50%; (2) areas of lots located within the Coastal Bluff as referenced in the City's Local Coastal Plan; (3) land located within a conservation zoning district; (4) areas of the lot located in a geologic setback; (5) any other stability or safety related setback recommended by the current California Building Code or project specific technical reports.
- F. **Lot Lines.** The location and orientation of new lot lines shall meet the following standards:
1. Front lot lines shall conform to the minimum lot width requirements of the Zoning Code. A flag lot, or a lot with a narrow projecting strip of land extending along a street, is not permitted.
 2. Each parcel shall have approximately equal lot width and/or lot depth, consistent with the minimum lot sizes described in the Zoning Code. Lot depth and lot width shall be measured in accordance with the current Zoning Code standards.
 3. New lot lines must be straight lines, unless there is a conflict with existing public improvements or the natural environment in which case the line may

be not be straight but shall follow the appropriate course.

4. Lot lines shall generally be parallel to the street. Unless the minimum public street frontage is provided, the lot line dividing the two parcels must be parallel to and not less than 50 feet from an existing front lot line, or outside the front half of the existing lot, whichever is greater.
 5. Interior lot lines shall be at right angles perpendicular to the street on straight streets, or radial to the street on curved streets.
 6. Lot lines shall be located within appropriate physical locations such as the top of creek banks, at appropriate topographical changes (top or bottom of slopes etc.) or at locations which clearly separate existing and proposed land uses.
 7. Lot lines shall be contiguous with existing zoning boundaries.
 8. The placement of lot lines shall not result in an accessory building or accessory use on a lot without a main building or primary use on the same lot, as defined in the Zoning Code.
 9. Lot lines shall not render an existing structure as nonconforming in any respect (e.g. setbacks, open yard, Floor Area Ratio, parking), nor increase the nonconformity of an existing nonconforming structure.
- G. **No Prior Urban Lot Splits for Parcel or Applicant.** In order to be eligible for an Urban Lot Split Application, the parcel that is the subject of the application shall not have been established through prior exercise of a Urban Lot Split as provided for in Government Code section 66411.7, which this Section implements. In addition to the foregoing, neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using a Urban Lot Split as provided for in this Section.
- H. **Required Setbacks.** All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split shall strictly comply with at least a four (4) foot side setback and at least a four (4) foot rear yard setback. All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split must also strictly comply with the front yard setback requirement of the underlying zoning district in which it is located. No portion of a dwelling constructed upon property that is subject to an Urban Lot Split, including but not limited to HVAC equipment, staircases, and patio covers, shall project into the required rear, side, or front yard setback. No setback requirement shall be required for a legally existing structure located upon a parcel subject to or created by an Urban Lot Split. However, the existing structure must comply with all of the other requirements of this Section, including the size, height, building separation, parking and permitting requirements set forth herein.

- I. **Maximum Height/Stories.** All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split shall be subject to a height limitation of sixteen (16) feet, and shall be limited to one story.
- J. **Building Separation Requirements.** All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split shall comply with the City's 10-foot building separation requirement as set forth in Chapters 9.09.
- K. **Single Family Residential Duplex Size Requirements.** For all dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split, the Total Floor Area shall not exceed 800 square feet and 1 bedroom.
- L. **Additional Requirements.**
 - 1. All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split shall be constructed upon a permanent foundation.
 - 2. The proposed Urban Lot Split shall conform to all applicable objective requirements of Title 7 of the Dana Point Municipal Code and the Subdivision Map Act (Division 2 of the Government Code (commencing with Section 66410)), except as otherwise expressly provided in this Section. In addition, notwithstanding Section 66411.1, the City shall not require dedications of rights-of-way or the construction of off-site improvements for the parcels being created as a condition of issuing a parcel map for an Urban Lot Split.
 - 3. All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split shall include sufficient permanent provisions for living, sleeping, eating, cooking, and sanitation, including but not limited to washer dryer hookups and kitchen facilities.
 - 4. All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split must have separate utility connections and separate utility meters.
 - 5. All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split unit shall be connected to the public water and sewer, and that connection shall be subject to a connection fee, or capacity charge, or both.
 - 6. The City may require that a parcel map submitted in connection with a proposed Urban Lot Split Permit contain easement(s) for the provision of public services and utilities.
 - 7. Each of the parcels created as part of an Urban Lot Split shall have access to, provide access to, or adjoin a public right-of-way.

8. A building permit for development on an urban lot split cannot be issued until the parcel map records.
 9. Notwithstanding any provision of Government Code Sections 65852.2, 65852.21, 65852.22, 65915, or 66411.7, no more than two dwelling units can occupy a parcel created through an Urban Lot Split. In addition, parcels containing both a Single Family Residential Duplex as that term is defined in Chapter 9.72 and subject to or created by an Urban Lot Split as that term is defined in this Section shall be ineligible for an accessory dwelling unit or junior accessory dwelling unit permit under Chapter 9.07.210. Operation of an accessory dwelling unit or junior accessory dwelling unit in violation of this Section shall be a violation of this Chapter and grounds for revocation of the Urban Lot Split permit.
 10. All dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split must meet the requirements of all Uniform Codes, including but not limited to the California Building Code and the California Fire Code, as such codes have been adopted and amended by Title 8 of the City of Dana Point Municipal Code.
 11. Solar panels shall be required for all dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split.
 12. No roof decks or balconies shall be constructed above or upon any dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split.
 13. In the event that the property upon which the Urban Lot Split is proposed is located within a Homeowners Association ("HOA"), the applicant shall submit to the City written evidence of the HOA's approval of the Urban Lot Split concurrent with their Urban Lot Split permit application.
 14. Dwelling units constructed upon lots created by an Urban Lot Split shall only be occupied by very-low to low-income households in perpetuity. A deed restriction shall be recorded prior to issuance of certificate of occupancy stating that, the dwelling units shall be occupied by very-low to low-income households in perpetuity. An annual report shall be submitted to the City of Dana Point Community Development Department to verify compliance with the income restriction requirements.
- M. **Parking Requirements.** Except as provided below, all dwelling units constructed upon parcel(s) subject to or created by an Urban Lot Split shall meet the following parking standards:
1. At least one (1) off street parking space shall be provided per dwelling.

2. Parking spaces shall comply with Zoning Code Chapter 9.35, except as may be permitted in this Section, and be provided on the same lot as the dwelling. A covered space is preferred, but not required.
3. Separate driveway curb cuts are required for each parcel(s) subject to or created by an Urban Lot Split.
4. The parking space(s) for any dwellings constructed upon property subject to an Urban Lot Split shall be in addition to the parking required for the primary residential dwelling unit(s).
5. The foregoing parking standards shall not be imposed on a dwelling constructed upon property subject to an Urban Lot Split in the following circumstances:
 - a. The dwelling is located within one-half (1/2) 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.

N. **Associated Permits.** If an application for a Urban Lot Split triggers the requirement for a discretionary or ministerial permit other than a Urban Lot Split and/or a building permit (including but not limited to a Site Development Permit, Coastal Development Permit and/or Conditional Use Permit), those associated permits must be applied for and obtained prior to application for an Urban Lot Split Permit. The process for obtaining the associated permit(s) shall be as set forth in Title 9 of the Dana Point Zoning Code.

Sec. 7.37.005. 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.
- 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 1.10.
- 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 6.14, 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. Urban Lot Split Permit Revocation. Any violation of this Chapter may result in revocation of an Urban Lot Split 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 4: This Ordinance is exempt from CEQA Review pursuant to Government Code sections 65852.21(J), and 66411.7(n) because it is not considered a "project" under Division 13 (commencing with Section 21000) of the Public Resources Code.

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

I, Shayna Sharke, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 22-____, introduced at a regular meeting of the City Council held on the ____ day of ____, 2022, and passed and adopted at a regular meeting held the ____ day of ____, 2022, by the following roll call vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

(SEAL)

SHAYNA SHARKE
CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss AFFIDAVIT OF POSTING
CITY OF DANA POINT) AND PUBLISHING

SHAYNA SHARKE, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 22-__
being:

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF THE CITY OF DANA POINT CALIFORNIA,
ADDING CHAPTER 9.72 TO THE CITY OF DANA POINT
MUNICIPAL CODE REGULATING SINGLE FAMILY
RESIDENTIAL DUPLEXES, ADDING CHAPTER 7.37 OF
THE CITY OF DANA POINT MUNICIPAL CODE
REGULATING URBAN LOT SPLITS.

was published in summary in the Dana Point Times on the _____ day of _____, 2022,
and the _____ day of _____, 2022, and, in further compliance with City Resolution
No. 91-10-08-1, on the _____ day of _____, 2022, and the _____ day of _____,
2022, was caused to be posted in four (4) public places in the City of Dana
Point, to wit:

Dana Point City Hall
Capistrano Beach Post Office
Dana Point Post Office.
Dana Point Library

SHAYNA SHARKE
CITY CLERK
Dana Point, California

SUPPORTING DOCUMENT 2: Senate Bill 9 – Housing Development



Senate Bill No. 9

CHAPTER 162

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.

[Approved by Governor September 16, 2021. Filed with
Secretary of State September 16, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 9, 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 no more than 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 local agency 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 or physically precluding either of the 2 units from being at least 800 square feet in floor area, 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

Ch. 162

— 2 —

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 local agency to ministerially approve a parcel 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 single-family 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 local agency 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, as defined, on either of the resulting parcels or physically precluding either of the 2 units from being at least 800 square feet in floor area, prohibiting the imposition of setback requirements under certain circumstances, and setting maximum setback requirements under all other circumstances. The bill would require an applicant to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of 3 years from the date of the approval of the urban lot split, unless the applicant is a community land trust or a qualified nonprofit corporation, as specified. The bill would prohibit a local agency from imposing any additional owner occupancy standards on applicants. By requiring applicants to sign affidavits, thereby expanding the crime of perjury, the bill would impose a state-mandated local program.

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 agency 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 specified reasons.

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

SECTION 1. Section 65852.21 is added to the Government Code, to read:

65852.21. (a) A proposed housing development containing no more than two residential units within a single-family residential zone shall be considered ministerially, without discretionary review or a hearing, if the proposed housing development meets all of the following requirements:

(1) The parcel subject to the proposed housing development is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

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

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

(A) 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.

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

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

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

Ch. 162

— 4 —

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

(A) If a local ordinance so allows.

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

(6) The development is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 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.

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

(2) (A) The local agency shall not impose objective zoning standards, objective subdivision standards, and objective design standards that would have the effect of physically precluding the construction of up to two units or that would physically preclude either of the two units from being at least 800 square feet in floor area.

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

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

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

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

(A) 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.

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

(2) For residential units connected to an onsite wastewater treatment system, a percolation test completed within the last 5 years, or, if the percolation test has been recertified, within the last 10 years.

(d) Notwithstanding subdivision (a), a local agency may deny a proposed housing development project if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 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.

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

(f) Notwithstanding Section 65852.2 or 65852.22, a local agency shall not be required to permit an accessory dwelling unit or a junior accessory dwelling unit on parcels that use both the authority contained within this section and the authority contained in Section 66411.7.

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

(h) Local agencies shall include units constructed pursuant to this section in the annual housing element report as required by subparagraph (I) of paragraph (2) of subdivision (a) of Section 65400.

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

(1) 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.

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

(3) “Local agency” means a city, county, or city and county, whether general law or chartered.

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

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

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

66411.7. (a) Notwithstanding any other provision of this division and any local law, a local agency shall ministerially approve, as set forth in this section, a parcel map for an urban lot split only if the local agency determines that the parcel map for the urban lot split meets all the following requirements:

Ch. 162

— 6 —

(1) The parcel map subdivides an existing parcel to create no more than two new parcels of approximately equal lot area provided that one parcel shall not be smaller than 40 percent of the lot area of the original parcel proposed for subdivision.

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

(B) A local agency may by ordinance adopt a smaller minimum lot size subject to ministerial approval under this subdivision.

(3) The parcel being subdivided meets all the following requirements:

(A) The parcel is located within a single-family residential zone.

(B) The parcel subject to the proposed urban lot split is located within a city, the boundaries of which include some portion of either an urbanized area or urban cluster, as designated by the United States Census Bureau, or, for unincorporated areas, a legal parcel wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

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

(D) The proposed urban lot split would not require demolition or alteration of any of the following types of housing:

(i) 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.

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

(iii) A parcel or parcels on which an owner of residential real property has exercised the owner's rights under Chapter 12.75 (commencing with Section 7060) of Division 7 of Title 1 to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

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

(E) The parcel is not located within a historic district or property included on the State Historic Resources Inventory, as defined in Section 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.

(F) The parcel has not been established through prior exercise of an urban lot split as provided for in this section.

(G) Neither the owner of the parcel being subdivided nor any person acting in concert with the owner has previously subdivided an adjacent parcel using an urban lot split as provided for in this section.

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

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

(2) A local agency shall approve an urban lot split only if it conforms to all applicable objective requirements of the Subdivision Map Act (Division

2 (commencing with Section 66410)), except as otherwise expressly provided in this section.

(3) Notwithstanding Section 66411.1, a local agency shall not impose regulations that require dedications of rights-of-way or the construction of offsite improvements for the parcels being created as a condition of issuing a parcel map for an urban lot split pursuant to this section.

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

(2) A local agency shall not impose objective zoning standards, objective subdivision standards, and objective design review standards that would have the effect of physically precluding the construction of two units on either of the resulting parcels or that would result in a unit size of less than 800 square feet.

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

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

(d) Notwithstanding subdivision (a), a local agency may deny an urban lot split if the building official makes a written finding, based upon a preponderance of the evidence, that the proposed housing development project would have a specific, adverse impact, as defined and determined in paragraph (2) of subdivision (d) of Section 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.

(e) In addition to any conditions established in accordance with this section, a local agency may require any of the following conditions when considering an application for a parcel map for an urban lot split:

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

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

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

(A) 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.

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

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

(g) (1) A local agency shall require an applicant for an urban lot split to sign an affidavit stating that the applicant intends to occupy one of the

Ch. 162

— 8 —

housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.

(2) This subdivision shall not apply to an applicant that is a “community land trust,” as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a “qualified nonprofit corporation” as described in Section 214.15 of the Revenue and Taxation Code.

(3) A local agency shall not impose additional owner occupancy standards, other than provided for in this subdivision, on an urban lot split pursuant to this section.

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

(i) A local agency shall not require, as a condition for ministerial approval of a parcel map application for the creation of an urban lot split, the correction of nonconforming zoning conditions.

(j) (1) Notwithstanding any provision of Section 65852.2, 65852.21, 65852.22, 65915, or this section, a local agency shall not be required to permit more than two units on a parcel created through the exercise of the authority contained within this section.

(2) For the purposes of this section, “unit” means any dwelling unit, including, but not limited to, a unit or units created pursuant to Section 65852.21, a primary dwelling, an accessory dwelling unit as defined in Section 65852.2, or a junior accessory dwelling unit as defined in Section 65852.22.

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

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

(m) For purposes of this section, both of the following shall apply:

(1) “Objective zoning standards,” “objective subdivision standards,” and “objective design review standards” mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. These standards may be embodied in alternative objective land use specifications adopted by a local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

(2) “Local agency” means a city, county, or city and county, whether general law or chartered.

(n) A local agency may adopt an ordinance to implement the provisions of this section. An ordinance adopted to implement this section shall not be

considered a project under Division 13 (commencing with Section 21000) of the Public Resources Code.

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

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

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

(2) Commencing January 1, 2012, and each calendar year thereafter, the amount of two hundred thirty-six thousand seven hundred ninety dollars (\$236,790) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

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

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

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

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

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

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

(e) Upon application of the subdivider filed before the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of six years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Before the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

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

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action before expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency that owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency that owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency that owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

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

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

Ch. 162

— 12 —

because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

○

