Tri-Valley Cities

DANVILLE • DUBLIN • LIVERMORE • PLEASANTON • SAN RAMON

August 31, 2021

The Honorable Gavin Newsom
Governor of California
State Capitol Building
Sacramento, CA 95814

Re: Senate Bill 9 (Atkins) Housing development: approvals
Veto Request from the Tri-Valley Cities

Dear Governor Newsom,

On behalf of the Tri-Valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and the Town of Danville, we write in respectful opposition to Senate Bill 9. ~~and~~ We urge you to Veto the bill when brought to your desk for consideration.

While the Author and her staff's work on this bill is appreciated, we have flagged the following issues which the bill does not address and want to provide some thoughtful commentary as to why the bill should be Vetoed:

1) **No Affordability Requirements:** SB 9 will incentivize developers to build more market rate housing. SB 9 does not require additional units to be affordable. As such, the bill will not reduce pricing in higher-income areas and may exacerbate gentrification in distressed or lower-income areas.

2) **Setbacks: (65852.21(b)(ii))** The maximum 4-foot side and rear setbacks allowed under SB 9 are inadequate to protect neighbors from large and intrusive new buildings from affecting light, privacy, and enjoyment of their homes and outdoor spaces. Jurisdictions should be allowed to establish appropriate setbacks, tailored to the size of lots and to structures that may be built under SB9, provided that such standards do not unduly restrict units otherwise allowable under the new laws. Furthermore, to avoid the sorts of ambiguities and confusion that has arisen around similar language included in recently passed ADU laws, SB 9 should be clear that cities may impose larger front or street side setbacks for corner lots, consistent with the character of existing single-family neighborhoods.

3) **Scope of Regulations:** Both the two-unit/lot, and urban lot split provisions refence "single-family residential zones" but provides no definition of such zones. If intended to apply to any zones in which single family residential

development is permitted, the scope of the regulations could be extremely broad, fundamentally altering the character not just of established single-family residential neighborhoods, but broad swaths of many communities, including rural residential areas, and commercial districts which frequently allow for single family residential uses to accommodate for the sort of mixture of commercial and residential uses that frequently exist in older neighborhoods. A more tailored definition should be provided that limits the ability to apply SB 9 to only districts where single-family residential is the principal permitted use.

4) **Serial Lot Splits: (66411.7(a)(3)(G):** SB 9 continues to contain too many loopholes that will allow a savvy developer to take advantage of the relaxed standards to reap a windfall, over densify neighborhoods, and create a "stealth" multi-lot subdivision entirely exempt from discretionary review. Specifically, though Section 66411.7(a)(3)(G), SB 9 attempts to avoid "serial" urban lot splits by prohibiting the same owner or a "person acting in concert with the owner" to subdivide adjacent properties. This latter provision is vague and ripe for abuse; and the adjacent lot provision does not account for a strategic "checkerboard" approach of acquiring and subdividing lots. The requirements also do not account for creative use of the Parcel Map or Lot Line Adjustment process to create intervening parcels under separate ownership, also to circumvent the intent of SB 9. More safeguards are needed to avoid abuse and unintended consequences. Additionally, although the latest set of amendments included a provision in **66411.7 (g)(1)** which is supposed to stop developers or speculators from taking advantage of the bill by incorporating an owner occupancy requirement of 3 years, the bill only requires an applicant for an urban lot split to sign an affidavit stating that they intent to occupy one of the housing units as their principal residence. The issue is that there is still no enforcement or mandate component for owner occupancy with an affidavit. Additionally, the owner occupancy requirement only applies to the lot split provision, and not the ministerial approval of an additional two units. This essentially renders the new provision ineffective.

5) **Demolition of Existing Structures: (65852.21(a)(5)).** Limitations on demolition of an existing structure are appreciated; however, the language should be made more stringent, to require both a local ordinance to explicitly allow for such limitation AND for the existing structure to have not been occupied by a tenant within the last 3 years. As written, the language is unclear and overly permissive, thereby encouraging teardowns of older and typically more affordable housing units.

6) **Historic Districts: (65852.21(a)(6)) and 66411.7(a)(3)(E)).** The language does appear to broaden the scope of historic resources protected from provisions of SB 9. However, not every historic resource or district has been formally adopted by Ordinance, and potential historic resources (not formally designated but nonetheless eligible) could be subject to demolition. Similar protections should be afforded to historic districts, properties, and neighborhoods identified in a locally adopted General Plan or Specific Plan.

7) **Parking Exceptions: (65852.21(c)(1) and 66411.7(d)3))** The criteria for exemptions from minimum parking standards are too broad, and inappropriate/unrealistic for communities where car ownership is a necessity. At a minimum, a distinction should be made between high frequency fixed rail service (such as BART), and more limited commuter services such as ACE (in the Bay Area and Tri-Valley), which have infrequent headways outside of peak commute hours. Furthermore, bus routes and car-share locations are subject to change over time, and thus do not provide a reliable indicator of transit access or availability. These standards work for transit-rich cities and towns, but not in most suburban and rural communities. The standards should require a minimum of one parking space per unit to be provided, with an option for city's whose local conditions support lower parking requirements, to adopt such exceptions at their discretion.

8) **Lot Splits, Other Concerns:**

a) SB 9 disallows local jurisdictions from requiring dedication of right of way or offsite improvements. Although it is acknowledged such improvements can add to the cost of a project, local jurisdictions typically require them in the interests of bringing substandard infrastructure up to current standards and addressing other legal requirements (such as complete streets requirements). The lot splits and up-zoning allowed by SB 9 provides a windfall for property owners and developers, while relieving them of many of the basic obligations typically required in conjunction with subdivision and intensification of use. These burdens then fall exclusively to the local jurisdiction to address, or to be forced to decide to allow substandard conditions to persist. (66411.7.(b)(3))

b) In conjunction with requirements of the bill that could require access to be provided to a nearby public street, the above provision creates confusion and ambiguity, since the point of interface between the parcel access, and the public ROW, typically requires some form of off-site improvements to create a safe and logical transition between the ROW and private property. (66411.7.(d)(2))

c) SB 9 alleviates a property owner from correcting any "existing non-conforming zoning conditions." At a minimum this provision should be clarified to note any LEGAL non-conforming zoning conditions and should include a backstop to allow for cities to correct non-conforming conditions that present a public health, safety, or welfare concern, or that would mean a new or substantially modified structure would not meet current building or fire safety standards. (664117(i))

d) While the bill's provisions are focused on what would likely be smaller lot subdivisions, the cumulative effect on water and sewer infrastructure is unknown. Upgrades to the systems could become the burden of the rate payers and not the project itself.

~~Again, we believe the~~The reasons listed above warrant a Veto on Senate Bill 9, and we respectfully urge you to consider this position.

Sincerely,

Renee S. Morgan
Mayor of Danville

Melissa Hernandez
Mayor of Dublin

Bob Woerner
Mayor of Livermore

Karla Brown
Mayor of Pleasanton

Dave Hudson
Mayor of San Ramon