

**LINDA VISTA-ANNANDALE ASSOCIATION**  
**Pasadena, CA**

November 9, 2021

Pasadena Planning Commission

Re: Meeting of November 10, 2021  
Agenda Item 5.B.: SB 9 Study Session

Chair Olivas and Commissioners,

The Linda Vista Annandale Association (LVAA) appreciates this opportunity to comment on staff's Ordinance proposals to mitigate SB 9. Mitigating SB 9's threats to all of Pasadena's distinctive and valued neighborhoods, including Linda Vista-Annandale, is of the highest importance to the LVAA Board of Directors.

City of Los Angeles Proposals and Concepts. Attached to this letter is a City of Los Angeles draft "Resolution" (LA Resolution), supported by Councilmember Paul Koretz, concerning SB 9 Mitigations in anticipation of an eventual Mitigation Ordinance. While the current status of this "Resolution" is not certain, we suggest in our discussion below inclusion of several of these good proposals and concepts in Pasadena's SB 9 Mitigation Ordinance. The document was distributed in connection with a recent SB 9 webinar hosted by Livable California.

Objections to Reliance on Turner Center Study. LVAA objects to the material from the Turner Center included on Slide 9 of staff's Power Point presentation. The "message" seems that concern about the impacts of SB 9 is overstated. This "message" is untrue.

The Turner Center, a staunch supporter and promoter of SB 9, is well known as created and highly funded by large state, national and international corporate and financial real estate development interests for the express purpose of ending single-family zoning in California and replacing homes in such zones with for profit, denser, multi-unit, market rate, rental housing. Turner and its backers (including many in the California Legislature and "big tech" companies in Northern California) cloak their efforts with the "trickle down" theory that expanding high-priced market rate rental housing will expand the supply of affordable housing. LVAA rejects this thinking. Meanwhile, highly funded large predatory development interests prepare to take over land starting, probably, with "cheaper" homes owned by families in communities of color. One way to respond is a strong local SB 9 Mitigation Ordinance.

LVAA Support For Staff Proposals. LVAA supports the inclusion of the following provisions in the SB 9 Mitigation Ordinance:

- A prohibition on ADUs and JADUs in conjunction with projects seeking to incorporate both a lot split and development of duplexes;
- A requirement to limit the size of new units to 800 square feet;
- An affordability component.

In this connection, LVAA suggests that SB 9 projects require a 55-year affordability covenant at the moderate income level applied to one new Duplex unit on each resulting subdivided lot; except that, as to a total of one of said new Duplex units, the applicant can elect instead to pay an in-lieu fee (to be determined) that goes toward the City's provision of affordable housing.

- A prohibition on short-term rentals of all new units developed under the provisions of SB 9;
- A one-story height limitation and a modified roof encroachment plane requirement on duplexes located within RS zones;
- A requirement for projects involving lot splits to include a central courtyard, similar to bungalow courts;
- A requirement to install residential greywater systems for more effective on-site water usage, groundwater recharging, and overall resource resilience, assuming Pasadena allows and enables such systems.
- A requirement for all-electric, Energy Star appliances to be identified on project plans; and
- A requirement for new construction to include cool roof technology.

LVAA Support For Additional Proposals. LVAA also supports the following additional proposals for inclusion in the SB 9 Mitigation Ordinance:

- "Dragnet" Objective Standards Provision. As suggested by the LA Resolution, all existing SB 9 compliant objective zoning, subdivision, and design review City standards shall apply to SB 9 projects in addition to any additional objective standards that the City may adopt.
- Maximum of Four Units and Two Lots. SB 9 obligates the City to allow two units per lot, and one lot split, for a total of four units and a total of two lots (parcels). The City is not required and shall not allow any additional units or structures (such as ADUs), nor any further lot splits, on any parcel that has been split once and on which four units have been allowed.

- **Impact/Development Fees.** As suggested by the LA Resolution, the City shall require the payment of impact or development fees related to the specific impact that will be imposed on a community by the creation of a SB 9 second lot and additional units. Impact fees can be related to a variety of impacts including, but not limited to infrastructure, construction impacts, recreation, libraries, and public art.

LVAA strongly supports imposing Residential Impact Fees on SB 9 development projects. More density and more residents mean increased requirements for parks and open space.

- **Parking.** SB 9I allows the City to choose to require parking consistent with the terms of SB 9. Accordingly, as suggested by the LA Resolution, the City shall require off-street parking of one space per unit.
- **Applicant Residency.** SB 9 requires every SB 9 applicant to provide an affidavit confirming that the applicant intends to reside in one of the SB 9 units for three years. To fulfill this obligation, and as suggested by the LA Resolution, the City shall require the applicant to sign and record an affidavit placing a covenant that will run with the land to confirm that the applicant will reside in one of the SB 9 units for three years from the City's grant of the application where a unit already exists, or, if no unit then exists, for three years from the City's issuance of the unit's Certificate of Occupancy.

LVAA further suggests that all such Pasadena affidavits include maximum enforceability provisions.

- **Setbacks.** SB 9 allows the City to choose to require setbacks consistent with the terms of SB 9. Accordingly, the City shall require setbacks of no less than four feet from the side and rear lot lines in all SB 9 projects and circumstances that are not expressly exempted from such a requirement by SB 9.
- **Notification Requirements.** As suggested by the LA Resolution, every SB 9 filing shall require the City to notify those property owners and tenants within a 500-foot radius from the proposed project site that a parcel map has been filed with the City.
- **Special District Exemptions.** The LA Resolution notes that SB 9 exempts historic districts and structures from its terms, and also retains the protections of the California Coastal Act. By way of illustration, the LA Resolution also notes indicates that Los Angeles has many other special districts that shall be exempted from SB 9 including Survey LA documented historic areas and properties, HPOZs, equestrian-zoned areas, hillside areas with substandard streets, wildlife corridors, habitat blocks, high

fire, and high wind zones. Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. The LA Resolution states that these districts shall be exempt and protected from SB 9 development.

Similarly, LVAA supports identifying specifically, and exempting and protecting from SB 9 development, all identifiable Special Districts in Pasadena, including, but not limited to: high fire and high wind areas with substandard streets including all Hillside Overlay Zoning Districts; all hillside areas with established geotechnical and hydrology challenges, including all Hillside Overlay Zoning Districts; all known Eligible Landmark Historic Districts; except for listed Landmark Districts, all areas of Pasadena included in a completed Historic Resources Survey; all Specific Plan areas; and, all wildlife corridors, wildlife habitat and other identified ecologically sensitive areas listed and described in Pasadena's Open Space and Conservation General Plan Element. LVAA supports Pasadena's adoption of Findings of Unavoidable Adverse Impacts pursuant to SB 9 if and as required for these Special District areas.

- Unavoidable Adverse Impacts. SB 9 authorizes the City to deny an SB 9 project upon written findings, based on a preponderance of evidence, that the project will have a specific, adverse impact upon public health and safety or the physical environment for which there is no feasible method to mitigate or avoid. As suggested by the LA Resolution, the City shall assess every SB 9 application for such unavoidable adverse impacts, shall provide its written assessment to the applicable City Council Office, make the written assessment available to the public, and shall deny a project if an unavoidable adverse impact is identified.

LVAA agrees: Findings of Unavoidable Adverse Impact shall be made pursuant to SB 9 if and as required for Pasadena Special Districts. These Districts as identified above and others as appropriate shall be exempt and protected from SB 9 development.

LVAA Hillside Area Unavoidable Adverse Impacts: Wildfire, Geotechnical and Hydrology Impacts. Pasadena's recently appointed Fire Chief has advised the City and LVAA community that our neighborhood is located in an Extreme High Fire Danger Area and is ripe for an Oakland Hills Firestorm type of extreme Wildfire. The Oakland Hills Firestorm involved marrow hillside roads, Santa Ana type winds, live embers crossing Freeways, and other devastating Wildfire impacts. A reminder: in addition to the extreme wildfire impacts from that fire, the Oakland Hills Firestorm was distinguished by the shocking gridlock of vehicles attempting to evacuate the hillsides and narrow roads and ending up burning in place with loss of life and property.

Our Pasadena LVAA area hillsides include open canyons throughout the area, dry vegetation, and other drought impacts, and, **narrow, winding substandard hillside streets that impede ingress and egress such as Glenoaks and Inverness and adjacent narrow hillside streets.** Pasadena's new overall plan is to develop a detailed Fire Mitigation Plan and upgrade our local Fire Station 38 with several million dollars of investment recently included in the City's CIP Budget at the request of the Fire Chief.

LVAA's hillside narrow, winding substandard streets, some parts of which are steep, simply cannot bear additional density, increases in population, increases in traffic, and increases in parking pressures from SB 9 development.

Much of our area has not burned in nearly 100 years. But we have experienced recent "small" fires at the Art Center Hillside campus. The most recent one occurred several months ago, and was caused, apparently, by Art Center construction activities. With significant effort, it was brought under control and put out. This fire easily could have resulted in an extreme Wildfire threatening the entire area.

And, what about the addition of thousands of escaping "fans" from the Rose Bowl, 25,000 - 40,000 or so attendees at a football game or concert, or up to nearly 90,000 World Cup Soccer game or upcoming Los Angeles Olympics attendees?

The Staff Report on Page 2 states that land within a very high fire hazard zone, is exempt from the provisions of SB 9. Arguably, this statement is not correct.

Any such claimed exemption is nullified if a project adopts "fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures." This can be read as nullifying any claimed exemption 100% of the time simply because current building codes are followed. Further, the exemption exists only for "high" and "very high" hazard areas on Cal Fire hazard maps, and these maps do not display "high hazard" areas when they are within cities. (Reference: Livable California Webinar on SB 9 and High Fire Risk Areas.)

In addition to fire risks, the LVAA hillsides are marked by a long history of geotechnical and hydrology issues connected to hillside development, including, but not limited to, slope stability including land slippage and slides, potential flooding, and storm runoff problems. For example, the northern portion of the Linda Vista area around Inverness has a substandard storm drain system including remaining areas with no storm drains. For some time, and in response to these ongoing issues, the Hillside Overlay Zoning Ordinance has required submission and City review of a Geotechnical Report and a Hydrology Report in connection with all discretionary Hillside Development Permit Applications. Ministerial SB 9 hillside

development will simply lead to unavoidable adverse impacts from geotechnical and hydrology hillside issues and provides no methods for mitigating or resolving these issues.

Thus, it appears that there are two paths available to exempt Hillside Overlay Zoning Districts from SB 9: determining that all Hillside Overlay Zone areas are exempt as Special Districts, including making the required Findings for Unavoidable Adverse Impacts, or, simply declaring exempt Hillside Overlay Zone areas from SB 9, and making the required Findings for Unavoidable Adverse Impacts. LVAA supports inclusion of all required provisions in the SB 9 Mitigation Ordinance to ensure that all Pasadena Hillside Overlay Zone areas are exempt from SB 9 development.

Pasadena's Urban Forest and the Tree Protection Ordinance. Pasadena's City Trees and Tree Protection Ordinance is codified in Pasadena's Municipal Code. The Tree Protection Ordinance provides in detail for protection of of valued Trees in RS zoned single-family neighborhoods. The level of protection for Trees in single-family neighborhoods has been subject to criticism and to suggestions for improving the level of protection provided, but the Ordinance cannot be ignored when considering SB 9 and SB 9 development impacts.

LVAA questions staff's suggested "Tree" topic for the SB 9 Mitigation Ordinance: requiring a minimum of two mature trees on-site, selected from the City's Native and Protected Species List. This suggestion fails to answer a basic question: does SB 9 override the protections for Trees on private single-family property as currently provided in the Tree Protection Ordinance? If there currently are 5 Trees on site protected by the Ordinance on an RS zoned single family lot, is the proposal that 3 can be cut down for SB 9 development, with no Permit? Can all 5 protected Trees be removed if two replacements are planted? Is it permissible to cut down all non-protected Trees on the site? Should not canopy trees be favored for preservation, particularly if the idea is to promote Pasadena's "green" policies? These matters need clarification. If a side yard or rear yard setback of greater than four feet is required to avoid destruction of a protected, mature, canopy Tree, is there an SB 9 Mitigation available to save any and all such Trees?

The SB 9 Mitigation Ordinance should include the ability for the City to deny an SB 9 project if two or more existing protected, mature, canopy Trees on site are slated for removal upon written Findings, based on a preponderance of evidence, that the project will have a specific, adverse impact upon public health and the physical environment for which there is no feasible method to mitigate or avoid. Such protected Trees are irreplaceable, and merely planning new Trees does not mitigate or avoid the impact of the removal of such Trees.

Thank you for considering LVAA's comments and concerns.

Sincerely,

*Nina Chomsky*

Nina Chomsky, LVAA President

cc: LVAA Board of Directors

## **RESOLUTION**

WHEREAS, Senate Bill 9 (Atkins) (the “Bill” or “SB 9”), entitled the California Home Act, was signed into law by the Governor on September 19, 2021 and becomes effective on January 1, 2022; and

WHEREAS, the Bill amends Government Code Section 66452.6, and adds two new Government Code Sections 65852.1 and 66411.7; and

WHEREAS, the Bill will require cities and counties, including charter cities, to provide for the ministerial (or “by right”) approval of a housing development containing two residential units of at least 800 square feet in floor area (“duplex”) and a parcel map dividing one existing lot into two equal parts (“lot split”) within a single-family residential zone for residential use; and

WHEREAS, SB 9 eliminates discretionary review and public oversight of this proposed subdivision of one lot into two parcels by removing public notice and hearings by the Planning Department, by requiring only administrative review of the project, and by providing ministerial approval of a lot split, and also offers several opportunities to extend the time, up to 10 years, for the use of an approved or conditionally approved Tentative Parcel Map; and

WHEREAS, the Bill exempts SB 9 projects from environmental review as required by the California Environmental Quality Act (CEQA), by establishing a ministerial review process without discretionary review or a public hearing, thereby undermining community participation and appropriate environmental impact vetting by local legislative bodies; and

WHEREAS, SB 9 further stipulates that a city or county cannot require a duplex project to comply with any standard that would prevent two units from being built on each resultant lot, and would prohibit a local agency from imposing regulations that require dedications of rights-of way or the construction of offsite and onsite improvements for parcels created through a lot split; and

WHEREAS, in addition to various constraints on SB 9 developments as set forth in SB 9, the Bill also authorizes cities and counties to enact local SB 9 implementation ordinances and guidelines that are objective and that are not inconsistent with its mandatory provisions; and

WHEREAS, it is important that the City of Los Angeles begin immediately developing a local SB 9 implementation ordinance with associated guidelines and not repeat the past mistakes related to State Housing legislation, specifically the State’s 2017 Accessory Dwelling Unit Bill (AB 2299) which became effective on January 1, 2017; however, the City of Los Angeles took approximately 3 years to enact a local ordinance for its implementation; and

WHEREAS, due to the Bill’s enactment on September 12, 2021 and its effective date of January 1, 2022, there is not sufficient time for a publicly-considered implementation ordinance to be developed, publicly reviewed, and adopted by January 1, 2022; however, in the short-term, the City can and must develop a memorandum of understanding to obligate all City Departments and agencies to abide by interim rules and requirements to implement SB 9 locally until such time as the permanent ordinance is adopted; and

WHEREAS, the City must also establish a minimum threshold by which certain SB 9 projects cannot be ministerial and must be subject to greater scrutiny in terms of a public hearing process and heightened environmental review; and

WHEREAS, there remains significant unanswered questions about legal, ownership, county-city, and interdepartmental responsibility pursuant to SB 9 implementation that need to be resolved; and

WHEREAS, it is important that both the short-term memorandum and long-term ordinance establish basic precepts applicable to all SB 9 projects, including, but not limited to:

1) **Objective Zoning/Subdivision/Design Standards.** The Bill authorizes the City to impose objective zoning standards, objective subdivision standards, and objective design review standards applicable to structures and parcels created by an urban lot split that do not conflict with this section; or preclude the construction of two 800 square foot minimum housing units. Accordingly, all such existing objective City standards shall apply to SB 9 projects, in addition to any additional objective standards that the City may adopt.

2) **Maximum of Four Units and Two Lots.** SB 9 obligates the City to allow two units per lot, and one lot split, for a total of four units and a total of two lots (parcels). The City is not required and shall not allow any additional units or structures (such as ADUs), nor any further lot splits, on any parcel that has been split once and on which four units have been approved.

3) **Parking.** The Bill allows the City to choose to require parking consistent with the terms of the Bill. Accordingly, the City shall require off-street parking of one space per unit, unless 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 or there is a car share vehicle located within one block of the parcel.

4) **Setbacks.** SB 9 allows the City to choose to require setbacks consistent with the terms of the Bill. Accordingly, the City shall require setbacks of up to four feet from the side and rear lot lines in all SB 9 projects and circumstances that are not expressly exempted from such a requirement by the Bill.

5) **Applicant Residency.** The Bill requires every SB 9 applicant to provide an affidavit confirming that the applicant intends to reside in one of the SB 9 units for three years. To fulfill this obligation, the City shall require the applicant to sign and record an affidavit placing a covenant that will run with the land to confirm that the applicant will reside in one of the SB 9 units for three years from the City's grant of the application where a unit already exists, or, if no unit then exists, for three years from the City's issuance of the unit's Certificate of Occupancy.

6) **Affordable Covenant.** There is at present an urgent Statewide and City concern about the provision of affordable housing. Every SB 9 project in the City shall require that a thirty-year affordable covenant for at least moderate income level must be applied to one of the units and listed on the HCID registry of affordable units or the applicant must pay an in-lieu fee (to be determined) that goes toward the City's provision of affordable housing.

7) **Impact/Development Fees.** The City shall require the payment of impact or development fees related to the specific impact that will be imposed on a community by the creation of a SB 9 second lot and additional units. Impact fees can be related to a variety of impacts including but not limited to infrastructure, construction impacts, recreation, libraries, and public art.

8) **Special District Exemptions.** SB 9 exempts historic districts and structures from its terms, and also retains the protections of the California Coastal Act. However, Los Angeles has many other special districts that shall be exempted from SB 9 including Survey LA

documented historic areas and properties, HPOZs, equestrian-zoned areas, hillside areas with substandard streets, wildlife corridors, habitat blocks, high fire, and high wind zones. Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. These districts shall be exempt and protected from SB 9 development.

9) **Unavoidable Adverse Impacts.** The Bill authorizes the City to deny an SB 9 project upon written findings, based on a preponderance of evidence, that the project will have a specific, adverse impact upon public health and safety or the physical environment for which there is no feasible method to mitigate or avoid. The City shall assess every SB 9 application for such unavoidable adverse impacts, shall provide its written assessment to the applicable City Council Office, and shall deny a project if an unavoidable adverse impact is identified.

Findings of unavoidable adverse impact shall be made pursuant to SB 9 if and as required, for these areas. These districts as identified above and others as appropriate shall be exempt and protected from SB 9 development.

10) **Notification Requirements.** Every SB 9 filing shall require the City to notify those property owners and tenants within a 500-foot radius from the proposed project site that a parcel map has been filed with the City.

**I THEREFORE MOVE** that the Department of Building and Safety, with assistance by the City Attorney and City Planning Department, prepare a memorandum of understanding prior to December 31, 2021 that is consistent with this Resolution and that shall be used by all Departments and agencies until such time as a local implementation ordinance is adopted.

**I FURTHER MOVE** that the City Planning Department, with the assistance of the City Attorney and Department of Building and Safety, begin developing a work program for the preparation of the permanent ordinance for the implementation of SB 9.