

MARIN COUNTY BOARD OF SUPERVISORS

ORDINANCE NO. 3767

**AN ORDINANCE PROVIDING LOCAL IMPLEMENTING REGULATIONS
FOR THE CALIFORNIA HOME ACT (STATE SENATE BILL 9) AS IT RELATES
TO RESIDENTIAL PROPERTY DEVELOPMENT**

WHEREAS, in 2021, the State of California enacted the Home Act of 2021, also known as Senate Bill 9 (SB 9), and SB 9 includes portions related to development of residential units as well as portions related to urban lot splits; and

WHEREAS, on April 11, 2022, the Marin County Planning Commission held a public hearing to take public testimony and adopted a Resolution recommending that the Board adopt an Ordinance to implement the portions of SB 9 related to development of residential units, and through a separate Resolution recommended an Ordinance to implement the portions of SB 9 relating to urban lot splits; and

WHEREAS, the provisions of this Ordinance are based on the best available information, while recognizing that pertinent State and Federal agencies have not yet provided all the information necessary for full clarity regarding the terms of SB 9. Therefore, given the state of uncertainty surrounding the terms of SB 9, adoption of this Ordinance is intended to temporarily govern as the County's implementing Ordinance regarding applications for proposed housing developments under SB 9 until such time as permanent amendments to the Marin County Development Code (Marin County Code Title 22) have been adopted to address SB 9; and

NOW, THEREFORE, THE MARIN COUNTY BOARD OF SUPERVISORS DOES SO ORDAIN as follows:

1. This Ordinance is intended to work in conjunction with the Marin County Development Code (Marin County Code Title 22), which contains regulations related to zoning and subdivisions within the unincorporated areas of Marin County that would continue to apply following the adoption of this Ordinance, except that when such regulations conflict with the provisions of this Ordinance, this Ordinance shall govern. This Ordinance shall not have any effect in the Coastal Zone.

This Ordinance will only supersede the standards and requirements of the Development Code. The California Building Code, as adopted by Marin County, the requirements of the County's stormwater permit, and the standards contained in Marin County Code Titles 23 and 24, with the exception of parking requirements, continue to apply and remain in full force and effect.

2. This Ordinance is not subject to the California Environmental Quality Act (CEQA) because it implements State requirements that are already in full force and effect and is not considered to be a project under CEQA.
3. Conformance with the provisions of this Ordinance shall be ensured by requiring any project proponent to obtain approval of a "Housing Development Regulation Compliance Review" (Housing Development Review) conducted by the Marin County Planning Division in consultation with other responsible agencies. The review of such an application shall conform

to the requirements of Development Code Section 22.40.052 for ministerial planning permit reviews. The information required for such an application shall be listed in guidance published by the Planning Division, consistent with the information required for Design Review and the standards of this Ordinance. The Planning Division shall charge the regular retainer fees due for a Design Review for Accessory Structures. The Planning Division shall issue an approval, approval with conditions, or denial of a Housing Development Review based on the project's conformance with the standards and requirements provided for in this Ordinance.

4. The procedures, standards, and requirements enumerated below apply to the development of residential units proposed under the provisions of SB 9 and this Ordinance.

If the project is ineligible for SB 9 processing because it does not meet the required standards, the applicant may elect to submit an application for the applicable discretionary approval.

(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 site subject to the proposed housing development is located within a legal lot wholly within the boundaries of an urbanized area or urban cluster, as designated by the United States Census Bureau.

- (2) The development is not located on a site that is any of the following:

- (A) 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.

- (B) Wetlands, as defined in the United States Fish and Wildlife Service Manual, Part 660 FW 2 (June 21, 1993).

- (C) Within a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection pursuant to Public Resources Code 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 a local agency, 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.

- (D) 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.

- (E) 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.

(F) 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. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this Ordinance, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site. A development 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 County.

(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.

(G) 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 development has received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. If a development proponent is able to satisfy all applicable federal qualifying criteria in order to provide that the site satisfies this subparagraph and is otherwise eligible for streamlined approval under this ordinance, the County shall not deny the application on the basis that the development proponent did not comply with any additional permit requirement, standard, or action adopted by the County that is applicable to that site.

(H) 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).

(I) Lands under conservation easement.

(3) Notwithstanding any provision of this ordinance 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 lot subject to the proposed housing development is not a lot 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 (the Ellis Act) to withdraw accommodations from rent or lease within 15 years before the date that the development proponent submits an application.

(5) The proposed housing development does not allow the demolition of more than 25 percent of the existing exterior structural walls, unless 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 other County ordinance and except as provided in paragraph (2), the County imposes the development standards of the R2 zoning district (two family, residential), to the extent that they do not conflict with this Ordinance and SB 9. In addition, except as provided in paragraph (2), the maximum floor area of any newly constructed primary residential unit authorized under this Ordinance shall not exceed 1,200 square feet, the residential units are not allowed to be built within a Stream Conservation Area or Wetland Conservation Area, and the development shall not entail the removal of any protected or heritage trees, except in conformance with Development Code Chapter 22.62 (Tree Removal Permits).

(2) (A) Notwithstanding paragraph (b)(1), the County 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 primary 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), Marin County requires minimum side and rear setbacks of four feet.

(c) In addition to any standards established in accordance with subdivision (b), the County requires that all of the following standards be satisfied in an application for two residential units, as provided for in this ordinance:

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

(A) The lot 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 lot.

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

(d) Notwithstanding subdivision (a), the County shall 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 California Government Code 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) The County shall require that a rental of any unit created pursuant to this ordinance be for a term longer than 30 days. A deed restriction shall be recorded against the property providing future owners with constructive notice of this restriction.

(f) The County shall not allow the creation of an Accessory Dwelling Unit as part of the development subject to this Ordinance and SB 9 if the lot on which the development is to occur was created by an Urban Lot Split approval and SB 9 (both the authority contained with Government Code section 65852.21 related to development projects and the authority in Government Code section 66411.7 related to urban lot splits).

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

(1) A housing development contains two residential units if the development proposes no more than two new units (including just one unit on a vacant lot) 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 the County or another local agency, and may include, but are not limited to, housing overlay zones, specific plans, inclusionary zoning ordinances, and density bonus ordinances.

EFFECTIVE DATE AND PUBLICATION

This Ordinance shall be and is hereby declared to be in full force and effect as of thirty days from and after the date of its passage and shall be published once before the expiration of fifteen days after its passage, with the names of the Supervisors voting for and against the same, in the *Marin Independent Journal*, a newspaper of general circulation published in the County of Marin.

VOTE

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin, State of California, on the 10th day of May, 2022, by the following vote to wit:

AYES: SUPERVISORS Supervisor Rodoni, Supervisor Connolly, Supervisor Moulton-Peters, Supervisor Rice

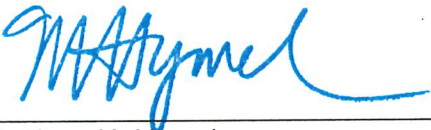
NOES: NONE

ABSENT: SUPERVISOR Judy Arnold



SUPERVISOR RICE, PRESIDENT
MARIN COUNTY BOARD OF SUPERVISORS

ATTEST:



Matthew H. Hymel
Clerk of the Board of Supervisors