

Public Comment -- 10/11/23 PC Mtg., Item Nos. 6A & 6B

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To:cdd <cdd@fortbragg.com>

Planning Commission,

This is kind of technical but the agenda descriptions for both items should have included the disclosure that the City is trying to claim CEQA exemptions from further environmental review, which is supposed to be included according to relatively recent case law applying the Brown Act. Technically, your determinations about agenda items that were not properly noticed could be set aside if challenged. I happen to agree with the substance of the CEQA determinations and think both items are exempt for the reasons laid out in the staff reports and draft resolutions but that doesn't rectify the incomplete agenda descriptions, which are primarily for the public's benefit to ensure that anyone reading the agenda understands what is being proposed. Our CDD has a long history of failing to properly notice agenda items, particularly public hearings, and this meeting appears to fall into that troubling pattern.

Regards,

--Jacob



Oct 11, 2023

**City of Fort Bragg, CA
416 North Franklin Street
Fort Bragg, CA 95437**

By Email: CDD@fortbragg.com

CC: kfc@jones-mayer.com; Cityclerk@fortbragg.com

Re: Proposed Amendments to Land Use and Development Codes Regarding Lot Splits

Dear Fort Bragg Planning Commission,

The California Housing Defense Fund (“CalHDF”) submits this letter as a public comment concerning item 6A on the agenda for tonight’s meeting. This item – consideration of an ordinance to implement Senate Bill 9 (“SB 9”) – presents several legal problems. CalHDF urges the Planning Commission to address these problems before recommending the City Council approve the ordinance.

The City May Require an Affidavit, but Not a Deed Restriction, for the Three-Year Residency Guarantee

The provisions in the draft ordinance regarding owner occupancy exceed the limits of state law and must be amended before the ordinance is passed. State law allows cities to require “an affidavit stating that the applicant intends to occupy one of the housing units as their principal residence for a minimum of three years from the date of the approval of the urban lot split.”(Gov. Code § 66411.7, subd. (g)(1)). However, the City cannot require a *deed restriction* requiring the owner to reside on-site for the three year period. (18.84.045(D)(2).) SB 9 specifically prohibits “additional owner occupancy standards, other than provided for” in state law. (*Id.* at subd. (g)(3).) That provision must be deleted before passage of the ordinance.

The City May Not Prevent Community Land Trusts and Nonprofits from Doing Urban Lot Splits

As drafted, the ordinance does not permit urban lot splits on “parcels under ownership of a community land trust [...] or a qualified nonprofit corporation.” (18.84.045(A)(4)(c).) But SB 9 specifically addresses such entities. It states that the owner-occupancy requirement “shall not apply to [...] a ‘community land trust,’ [...] or [...] ‘qualified nonprofit corporation.’” (Gov.

Code § 66411.7(g)(2).) This indicates that such entities *should* be allowed to take advantage of SB 9’s lot split provisions, and the contrary language in the draft ordinance must be stricken. (CalHDF also notes that when the ordinance is so amended, it must provide exemptions to the owner-occupancy requirement for community land trusts and qualified nonprofit corporations. (*Id.*))

Separate Conveyance of Duplex Units Cannot Be Prohibited

Finally, the ordinance proposes to prohibit the separate sale of duplex units on the same lot. (18.84.045(D)(2)(b).) But duplexes are not like ADUs – they can be sold individually. SB 9 states, “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: [listing requirements].” (Gov. Code § 65852.21(a).) A deed restriction barring the separate sale of duplex units does not appear on the list of requirements. Thus, the City goes beyond its authority under SB 9 by attempting to require such a deed restriction, and the above-quoted language should be deleted before passage.



CalHDF appreciates the Planning Commission’s attention to the City’s SB 9 ordinance. As the Commission knows, our state faces an acute housing crisis, and the legislature enacted SB 9 to address that crisis. It is important, then, that local implementing ordinances follow the law, and CalHDF urges the Commission to correct the problems described above.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dylan Casey", written over a circular stamp or seal.

Dylan Casey
CalHDF Executive Director