



SOUTH BAY CITIES COUNCIL OF GOVERNMENTS

SB 9 LEGAL CHALLENGE

**Aleshire & Wynder
Pam Lee**



OVERALL STATUTORY THEME

OVERALL STATUTORY THEME

HOUSING ISSUES

- Rapidly growing homelessness
- Increasing lack of affordability in urban areas/job centers
- Increasing costs of land, labor, and supplies
- Investor-driven markets
- Inflation

STATE'S VIEWS ON HINDRANCES TO HOUSING

- NIMBYism
- Over-regulation by local governments
- Lack of incentives for builders

OVERALL STATUTORY THEME

STATE'S ATTEMPTS TO ADDRESS HOUSING ISSUES

- SB 330, SB 8 – land use controls; prohibitions on lowering residential density; ministerial approval of development applications
- SB 35 – failure to meet RHNA targets □ ministerial approval of certain residential development projects with affordability component and no CEQA review
- SB 9, SB 10 – elimination of single family zoning and overturning of voter initiative process; ministerial approval

RESULTS

- Reduction in public health and safety and environmental protections
- Gentrification
- Failure to address underlying lack of housing and affordability
- Erosion of due process, transparency, and equal protection



SB 9 LAWSUITS

SB 9 – APPLICABLE LAW & IMPACTS

Applicable law

- Ministerial approval of lot splits and/or up to two housing units in a single-family zone or where single-family residences are the primary use
- Only objective development standards may be applied
- Very few exceptions apply

Adverse Impacts

- SB 9 does not allow a city to address public health, safety, or environmental concerns
- SB 9 disrupts land use, planning, and housing element laws
- SB 9 removes transparency, public engagement, and due process

SB 9 – TWO LAWSUITS

General Law vs. Charter Law Cities

- General Law cities
 - Bound by the ***State's general laws***, even with respect to municipal affairs (e.g., policing, elections, employees, land use)
 - State laws will pre-empt city laws/rules based on a Statewide interest or concern
- Charter Cities
 - Bound by a city's ***charter and has supreme authority*** over municipal affairs ("home rule")
 - Charter only needs to state the city intends to exercise its full power under the CA Constitution over all municipal affairs
 - ***Exception***: where the state has stated an issue is of Statewide concern and State intends to occupy the field of regulation

SB 9 – TWO LAWSUITS

General Law City Lawsuit

- ***Not reasonably related*** to Statewide concern – Nowhere in the text of SB 9 is there a reference to or requirement to make the new homes or lots subject to affordability covenants
- **Two cities: *Lakewood and Rancho Palos Verdes***
- **Hearing date: None yet, but expected to be late summer 2023**

SB 9 – TWO LAWSUITS

Charter City Lawsuit

- 1. State law addresses a matter of ***Statewide concern***
- 2. ***Not reasonably related*** to Statewide concern
- 3. ***Not narrowly tailored*** to avoid unnecessary interference into local governance
 - SB 9 does not allow a city to address public health or safety concerns
 - SB 9 disrupts a city's housing element and State housing laws
 - SB 9 excludes certain areas unevenly and unfairly
 - SB 9 removes public engagement and lacks due process
- **Four cities: *Carson, Redondo Beach, Torrance, Whittier***
- **Hearing date: April 2023**



WHY/HOW TO GET INVOLVED?

State will continue to erode local control over other areas of municipal affairs, not just land use

- **Become a charter city**
- **Make comments known to legislators**
- **Support legislation for local control**
- **Support Local Governments retaining local control and power on behalf of the community**

THANK YOU

Pam Lee - plee@awattorneys.com

Visit us at www.awattorneys.com.



**ALESHIRE &
WYNDER** LLP
ATTORNEYS AT LAW