

Date: November 16, 2021

To: City Council Members

From: Council Members Kou and Stone

Subject: Proposed Resolution to prepare an urgency ordinance to establish basic precepts applicable to all Senate Bill 9 (SB 9) projects

Attachment(s): Draft Motion

GOALS

The purpose of land use planning is to regulate land and property markets to ensure complementary uses and to address cumulative infrastructure and environmental impacts.

Zoning is designed to protect and promote the public health, safety, peace, and general welfare through setting forth and coordinating city regulations governing the development and use of land in accordance with the city's General Plan.

Land use planning and zoning are intended to promote the compatibility of land uses while helping to ensure the provision of adequate water, sewer, transportation, parking, parks, open space, and other public and community facilities and institutions.

BACKGROUND AND DISCUSSION

Existing State laws leave nearly all zoning decisions to local governments – this is a major part of the home rule doctrine. However, several new bills passed in the State Senate and Assembly preempts local regulations for residential zoning. SB 9 signed by Governor Newsom into law on December 19, 2021, would substantially impact land use of the City of Palo Alto.

Senate Bill 9 (Atkins) would require ministerial approval of any proposed housing development containing two full-size residential units within any residential zone, without discretionary review or a hearing, if the proposed development meets certain requirements. It appears the bill would also mandate approval of lot-splitting down to a minimum lot size of 1,200 square feet, with the ministerial approval of duplexes then applicable to the post-split lots, hence the impact would be four units on each formerly single-family/R1 lot .

SB 9 prohibits mandatory public notification or a public engagement process. It mandates a ministerial process which allows for the Director of Planning and Development to determine approval of lot splits and project details. The bill restricts the ability of cities to stipulate parking, safety, noise, and privacy protections as part of the lot-splitting or duplex approval process.

RECOMMENDATION

Discuss and enact an urgency ordinance prior to December 13, 2021, consistent with this draft motion, until such time as a local implementation ordinance is adopted inclusive of the key elements of the draft motion.

RESOURCE IMPACT

Council Direction:

Senate Bill 9 (Atkins)), entitled the California Home Act, becomes effective on January 1, 2022. The Bill amends Government Code Section 66452.6, and adds two new Government Code Sections 65852.1 and 66411.7. The Bill requires 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 “lot split” dividing one existing lot into two equal parts within a single-family residential zone for residential use.

SB 9 eliminates discretionary review, public noticing, and public hearings of such proposed subdivisions by requiring only administrative review of the project, and by providing ministerial approval of a lot split, and it offers several opportunities to extend the time, up to 10 years, for the use of an approved or conditionally approved Tentative Parcel Map. SB 9 projects are exempted from environmental review under the California Environmental Quality Act (CEQA), 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.

The Bill 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.

It is important that the City of Palo Alto begin immediately developing a local SB 9 implementation ordinance with associated guidelines; and

Due to the Bill’s effective date, there is not sufficient time for a non-urgent implementation ordinance to be developed, publicly reviewed, and adopted by January 1, 2022. However, the City can develop an urgency ordinance 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.

The City can also establish a minimum threshold by which certain SB 9 projects cannot be ministerial and must be subject to a public hearing process and environmental review.

There remain significant unresolved questions about legal, ownership, county-city, and interdepartmental responsibility pursuant to SB 9 implementation that need to be resolved.

The urgency ordinance shall establish basic precepts applicable to all SB 9 projects, including:

- 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 relevant 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, plus one lot split, for a total of four units on a total of two lots (parcels). The City is not required and shall not allow any additional units or structures (such as ADUs/JADUs), nor any further lot splits, on any parcel that has been split once.
- 3) **Housing Units Square Footage.** While SB 9 65852.21(a)(6)(b)(2)(A) allows construction of two 800 square foot minimum housing units on the newly split lot, for the City's SB 9 projects, the lot coverage shall be a combined square footage of 1,600 square foot.
- 4) **Parking.** The Bill allows the City to choose to require parking consistent with the terms of the Bill. Accordingly, the City shall require 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. If these conditions which exempt parking should no longer apply or exist, then all dwelling structures will lose their Certificate of Occupancy or occupancy permits.
- 5) **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.
- 6) **Open Space.** Rooftop gardens, open space, patios are prohibited for SB 9 projects.
- 7) **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.

8) **Affordable Covenant.** There is an urgent Statewide and City concern about the provision of affordable housing. Every SB 9 project in the City shall require an affordable covenant restricting rents to below moderate-income level (below 100% AMI), or owner-occupation with a price ceiling equivalent to current FHA mortgage limits. These limits shall be applied to all new units and listed on the HCID registry of affordable units, or the applicant must pay the commensurate in-lieu fee that goes toward the City's provision of affordable housing.

9) **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.

10) **Special District Exemptions.** SB 9 exempts historic districts and structures from its terms, and also retains the protections of the California Coastal Act. However, Palo Alto has many other special districts that shall be exempted from SB 9 including historic areas and properties, 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.

11) **Demolition restrictions.** Every SB 9 project shall not allow the demolition of more than 25% of the existing walls as per 65852.21(a)(5)(a).

12) **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 City Council, 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.

13) **Notification Requirements.** Every SB 9 filing shall require the City to notify those property owners and tenants within a 600-foot radius from the proposed project site that a parcel map has been filed with the City.

14) **Monitoring Requirements.** To ensure housing is used for long term housing needs, the City shall collect data and require registration of all short-term rentals or other uses that are not long-term housing. The City shall also monitor lot splits and procurement by corporations and LLCs.

15) **Reporting.** The City shall provide a report every 6 months detailing the number of lot splits and the owner of record.

MOTION

1. The City Planning and Development Department and the City Attorney, shall prepare an Urgency Ordinance prior to December 13, 2021 that is consistent with this Motion and that shall be used by all Departments and agencies until such time as a local implementation ordinance is adopted.
2. The Planning and Development Department with the assistance of Boards and Commissions to confirm objective standards specified geography to maintain unique needs for lot design and midpoint width, parking affordability requirements for first time home buyers based on FHA loan limits for single-family dwellings and duplexes, limits on total dwelling units on substandard streets and when the development fails to comply, grading, hauling, adjustments to building pads, and private streets within maps.
3. The Planning and Development Department shall develop prohibitions such as, but not limited to, two units per split lot, changes in grade, hauling, adjustments to building pads, and private streets, removal of protected and desirable trees and their replacements, basements, dewatering, rooftop uses, backyard habitats.
4. The Planning and Development Department shall prepare a report that discusses the feasibility of potential exemptions for high fire hazard severity zones, habitat for protected species, horse keeping, substandard roadways, or other geographic areas as determined for which the implementation of SB 9 would result in a specific, adverse impact.
5. The City Planning and Development Department, with the assistance of the City Attorney, shall begin developing a work program for the preparation of the permanent ordinance for the implementation of SB 9.