



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 1

Section Name: {{section.name}}

File ID: {{item.tracking_number}}

TO: City Council
FROM: Drew Corbett, City Manager
PREPARED BY: Community Development Department
MEETING DATE: June 06, 2022

SUBJECT:
New State Housing Law Senate Bill 9 (SB9) – Study Session #2

RECOMMENDATION:
Provide direction to staff on what requirements should be included in the City's SB 9 Ordinance.

BACKGROUND:
On September 16, 2021, Governor Newsom signed Senate Bill 9 (SB 9) into law to help address the housing crisis. Effective January 1, 2022, SB 9 requires local agencies to ministerially¹ approve certain residential subdivisions and housing development projects that allow for the development of up to two main dwelling units (duplexes) within single-family residential zoned areas.

Senate Bill 9 (SB 9)
SB 9 projects that meet the qualifying criteria and development standards outlined below are not subject to the California Environmental Quality Act (CEQA), nor local density limits. Application of objective zoning and design standards are permitted so long as they do not preclude a main dwelling unit that is at least 16 ft. tall, 800 sq. ft. in size, and 4 ft. from the side and rear property lines. Per State law, projects may only be denied if certain findings pertaining to adverse impacts to the environment or codified objective public health or safety standards are made, and where there is no feasible method of mitigation.

Qualifying Criteria:

1. Zoned single-family residential (i.e. R1-A, R1-B or R1-C);
2. Not located in a historic district or included on the State Historic Resources Inventory;
3. Not located in specified resource lands or hazard areas per Government Code Sections 65913.4(a)(6)(B-K) (generally including, but not limited to, prime farmland, high fire areas, wetlands, hazardous waste sites, lands under conservation easements, or fault zones etc.);
4. Has not been occupied by a tenant within the last three years;
5. Does not involve the demolition of any affordable or rent controlled housing; and
6. Does not involve the demolition of more than 25 percent of any existing exterior walls of any existing housing unit.

Development Standards – Two Unit (Duplex) Development and Urban Lot Split Development:

1. Setbacks
 - Minimum four-foot side and rear yard setback;

¹ A ministerial permit is a permit granted at the staff level with no environmental review, public hearing, or discretion, based on established objective zoning and building code standards.

- No setbacks are required for units constructed in the same location and dimensions of existing legal structures or within exiting living area.
2. Parking
 - Up to one off-street parking space per unit may be required;
 - No parking shall be required for units located within a half-mile walking distance of a high-quality transit corridor (e.g. El Camino Real), major transit stop², or within one block of a carshare vehicle site. (see [Attachment 3](#) for a half mile transit radius map).
 3. Limits of Use
 - Short Term Rentals (i.e. rentals of less than 30 consecutive calendar days) are prohibited for units created under SB 9;
 - Units restricted to residential uses only.

Development Standards – Urban Lot Split:

1. Parcel Size
 - 1,200 square foot (sq. ft.) minimum (i.e. original parcel must be at least 2,400 sq. ft.);
 - Maximum 60/40 lot split size differential.
2. Parcel Width and Depth
 - Existing standards (San Mateo Municipal Code Sections [27.18.040](#) and [26.20.050](#)) still apply so long as they do not preclude the proposed lot split.
3. Access
 - Newly created parcels shall have access to, provide access to, or adjoin the public right-of-way.
4. Easements and Right-of-Way Dedications
 - Easements necessary for the provision of public services and facilities may be required by local agencies;
 - Right-of-way dedications or construction of off-site improvements shall not be required by local agencies.
5. Correction of Nonconformities
 - Correction of existing legal non-conforming zoning conditions shall not be required by local agencies or imposed as a condition of approval.
6. Prohibited Actions
 - Sequential splitting of lots created from a prior SB 9 application is prohibited;
 - Neither the owner, nor anyone acting in concert with the owner, may have previously subdivided an adjacent parcel using SB 9.

Previous City Council Study Session

The City Council held its first Study Session on SB 9 on February 22, 2022 and provided general policy direction on five key areas where local agencies can exercise discretion within the confines of the State law.

Policy Guidance Areas:

1. Demolition Limits
 - SB 9 establishes an initial 25 percent exterior wall demolition limit for existing units with local discretion to allow more.
 - Council recommended staff explore increasing the demolition limit to 50 percent, consistent with existing City requirements, to afford more flexibility to property owners, which may increase the feasibility of building attached units, allow for more architecturally pleasing development and/or the preservation of usable open space on parcels.
2. Public Noticing
 - No public noticing is required under SB 9.
 - Council recommended providing a courtesy informational public notice for SB 9 projects prior to their

² A major transit stop is defined as an existing rail or bus rapid transit station or a bus stop that has an intersection of two or more bus routes with a 15-minute or less service interval during the morning and afternoon peak commute hours (PRC21064.3). El Camino Real is considered a high-quality transit corridor and the City's CalTrain stations are considered major transit stops.

approval.

3. Subdivision Map Extension

- SB 9 allows local jurisdictions to increase the initial term of a subdivision map from two to up to four years.
- Council recommended to not increase the life of a subdivision map beyond the existing allowable extensions, which can allow up to eight years for recordation, before expiration.

4. Dwelling Unit Maximum for Urban Lot Split Projects

- Urban lot split projects under SB 9 are initially limited to a maximum of two dwelling units per lot with local discretion to allow up to four dwelling units.
- Staff sought direction on the maximum number of dwelling units for urban lot split projects. Council requested this item be brought back for further discussion in a second study session.

5. Unit Size Limits

- Per SB 9, local regulations must allow each main unit to be at least 800 sq. ft. in size. Local jurisdictions have the ability to allow larger sized SB 9 units.
- Staff sought guidance on whether additional or different FAR limitations (that do not preclude an 800 sq. ft. unit size) should be set for SB 9 units or if unit size should be restricted 800 sq. ft. Council requested this item be brought back for further discussion in a second study session.

The Council also requested additional information on how neighboring jurisdictions are implementing SB 9 and how the SB 9 duplex development standards compare with the City's R2 development standards.

A comparison of eight surrounding jurisdictions (included in [Attachment 4](#)) found that many jurisdictions have implemented regulations that defer to the minimum standards allowed by State law. The majority of jurisdictions have not limited SB 9 units to 800 sq. ft. in size but have deferred to the maximum FAR of the underlying zoning district to dictate maximum unit size above 800 sq. ft. Some cities have also adjusted their standards/definitions as an additional mechanism to regulate unit sizes in certain situations. For instance, Sunnyvale has established two separate FAR limitations depending on the property or unit features, and San Carlos has limited all new units on SB 9 properties to a maximum of 800 sq. ft. and further defines a new unit as any existing dwelling where more than 50 percent demolition has occurred. Most other jurisdictions have also restricted urban lot split projects to a maximum of two dwelling units per parcel and have additional height restrictions for units located in rear yards.

The Council also raised equitability concerns about allowable development in the City's existing R2 (Duplex) zoning district compared to duplex development permitted by SB 9. Reflected in a comparison chart included in [Attachment 5](#), R2 development standards shows the following key differences:

1. Require larger parcels (5,000 sq. ft.), as compared to 1,200 sq. ft. minimum under SB 9 lot split;
2. Greater rear and side yard setbacks – 5-foot side setback, 15-foot rear yard setback, and 25-foot rear yard setback above the first story³ compared to the 4-foot requirement under SB 9;
3. Greater on-site parking requirements of up to 2.2. spaces per unit as compared to 0-1 space per unit required under SB 9, and
4. Could allow 2-4 dwelling units (inclusive of ADUs) compared to 4 units allowed for non-urban lot split projects, and a minimum of 2 units (with a potential to increase to 4 units) for SB 9 urban lot split projects.

Areas that are not specifically addressed by SB 9 include maximum height limits, daylight planes, paving limits, minimum parcel width and minimum street frontage, so the underlying standards of the R1 district would still apply. Development standards in these areas are the same in the R1 and R2 zoning districts. Since SB 9 does not address these areas, there is an opportunity to continue to defer to the underlying zoning district or set new standards commensurate with the R2 District as long as those standards do not preclude an otherwise compliant SB 9 or ADU unit as permitted by State law.

DISCUSSION ITEMS FOR CITY COUNCIL INPUT

³ Setback standards stated are for interior lots. Side setback standards for corner lots are greater as outlined in SMMC [Section 27.18.080\(b\)\(1\)](#)

To aid in the preparation of a local SB 9 Ordinance and associated Zoning Code amendments to ensure consistency with State law, staff is seeking initial policy direction from the City Council on three areas that local jurisdictions have discretion to establish their own development standards.

1. Maximum Number of Units – Urban Lot Splits

There are three types of SB 9 development projects – Two Unit (Duplex) Development, Urban Lot Split, and a combined Urban Lot Split with Duplex Development project. Regarding maximum unit potential per lot, there is a distinction between SB 9 projects that propose an urban lot split and projects that do not. According to HCD guidance, projects that do not involve an urban lot split and that meet the development standards outlined in SB 9, are allowed up to four units per State law. This four-unit development could consist of two primary units, one ADU, and one JADU⁴. SB 9 projects that involve an urban lot split, however, are initially limited to two units per property (i.e. two main units or any combination of main unit, ADU or JADU). The State recognized that building up to four units on smaller lots with reduced setbacks and parking standards may not be appropriate for every jurisdiction and built flexibility into the law to allow local discretion. As such, local jurisdictions have the ability to allow up to four units (duplex, an ADU, and a JADU) on urban lot split properties.

In July 2021, UC Berkeley’s Turner Center for Housing Innovation published a study (Attachment 7) on SB 9 and its impact on housing. The study found that high sales prices, limited buildable area on many lots, and high construction costs limit the feasibility of development. In addition, even if the economies of scale are favorable, many property owners may still choose not to build. As such, the study concluded that single-family homes would continue to be the dominant land use in areas subject to SB 9. For landowners who would take advantage of SB 9, the Turner study found that duplexes would be the more feasible development option for most single-family zoned parcels throughout the state and that most of the new units created through SB 9 would likely be smaller in size and thus more affordable compared to existing residences.

Staff is seeking initial feedback on how many units per lot should be permitted on SB 9 lot split projects. To provide context, San Mateo has approximately 16,200 single-family zoned lots that would be subject to SB 9. Of those, 1,566 parcels are less than 5,000 sq. ft. and 1,542 parcels are greater than 10,000 sq. ft. The majority of R1 zoned parcels (i.e. approximately 13,100 parcels) throughout the city fall between 5,000 to 10,000 sq. ft. in size. Attachment 8 illustrates maximum development in terms of number of units and FAR currently allowed under State law. Attachment 9 illustrates maximum development for an urban lot split project if the City chooses to increase the number of units allowed on urban lot split properties. To provide a sense of scale, these attachments demonstrate potential maximum development in terms of the number of units and maximum unit size⁵ on 60/40 lot split projects based on average lot sizes in the R1-A, R1-B and R1-C zoning districts.

- Question 1: Should development potential be limited to two units per urban lot split parcels as minimally allowed by State law or increased to three or four units per property?
- Question 2: Alternatively, should staff explore a tiered approach of potentially limiting smaller sized R1 lots created through an SB 9 urban lot split to two units while perhaps allowing three or even four units on larger sized lots?
- Question 3: If more than two units are recommended, what type of unit should be allowed on urban lot split properties in addition to two main dwelling units? ADUs, JADUs, or both?

⁴ A JADU must be located within the walls of a primary dwelling and would not create additional square footage to a parcel in terms of maximum FAR.

⁵ The graphics represent maximum development scenarios in which existing development is built to the maximum allowable by the underlying zoning district and where a second main unit of 800 sq. ft. and ADU of 800 sq. ft. are also proposed. Not all potential development scenarios are depicted and not all property owners may elect to build out the maximum development possible under SB 9.

Some potential outcomes of increasing the number of units on urban lot split properties include: creating more housing units to meet the City's housing needs, creating more potentially affordable units, allowing higher densities that may be considered by some to be architecturally inappropriate in terms of size and scale on smaller sized lots allowed through SB 9, potential on-street parking impacts, and reduction in usable outdoor open space in single-family zoned areas.

2. Unit Size or Other Size Limits

Under SB 9 and the State's ADU regulations, local jurisdictions must allow a unit size of at least 800 sq. ft. for both SB 9 units and ADUs, and cannot impose local development standards that preclude such development. Though the State set a minimum unit size, local jurisdictions can allow units larger than 800 sq. ft.

In the City, each underlying zoning district contains Floor Area Ratio (FAR) development standards. These standards are based on the size of the parcel and are used to control the maximum size/square footage of development. As such, larger parcels have the ability to construct more square footage compared to smaller parcels. Regardless of the size of a parcel, however, the City has set a maximum FAR limit of 6,000 sq. ft. for all single-family zoned parcels. The City contains three single-family zoning districts – the R1-A, R1-B, and R1-C zoning districts. Average parcel sizes⁶ for these districts are: 20,000 sq. ft. in the R1-A, 9,000 sq. ft. in the R1-B and 6,000 sq. ft. in the R1-C zoning districts. Under SB 9, a parcel built to its maximum FAR limit could add one 800 sq. ft. SB 9 primary dwelling unit and one 800 sq. ft. ADU. Thus, maximum development potential under SB 9 could be 1,600 sq. ft. over the site's otherwise maximum FAR limit. Attachment 9 illustrates potential maximum development for SB 9 Duplex Development and Urban Lot Split projects based on average parcel size.

Staff is seeking initial guidance on if SB 9 unit sizes should be limited in size or if larger unit sizes should be allowed.

- Question 1: Should SB 9 units be limited to 800 sq. ft.?
- Question 2: Should SB 9 units be allowed to exceed 800 sq. ft.?
- Question 3: Alternatively, in the instance where a duplex (either attached or detached) is proposed, should one SB 9 unit potentially be limited to 800 sq. ft. and the other SB 9 unit be larger?
- Question 4: If larger unit sizes are recommended, should the floor area of any new SB 9 unit in excess of 800 sq. ft. be applied to the maximum floor area allowed by the underlying zoning district? This would be similar to the City's recently adopted ADU regulations.
- Question 5: In addition to, or instead of the options listed above, should reduced or alternative FAR standards (different from the underlying zoning district) be established for SB 9 projects?

Some potential outcomes of limiting unit sizes to 800 sq. ft. include: creating unit sizes that are smaller and thus potentially more affordable to either first time buyers or a wider range of income earners as compared to larger units, limiting the overall development intensity (in terms of square footage) of single-family zoned parcels, and potentially preserving more usable open space per parcel that could be utilized as yard space, parking, or for landscaping.

Some potential outcomes of allowing unit sizes in excess of 800 sq. ft. include: increasing the economic returns for property owners, larger unit sizes may allow for more bedrooms and housing for families, and may result in the reduction of usable open space on site.

3. Open Space Standards

SB 9 allows up to four dwelling units per property (2 main units, 1 ADU, and 1 JADU) and up to 1,600 sq. ft. above a property's maximum FAR if existing development is already at its maximum FAR. As illustrated in Attachment 6,

⁶ Average parcel sizes are rounded to the nearest whole number.

maximum development potential (both in number of units and FAR) that is one-story in nature, can result in noticeably reduced usable open space on smaller sized parcels.

Staff is seeking initial guidance on whether open space development standards should be explored for SB 9 projects. This could take the form of lot coverage standards (how much structures can cover a property) or required open space similar to standards used for multi-family development.

- Question 1: Without precluding a unit size of 800 sq. ft. that is otherwise compliant with the development standards outlined in State law, should staff explore the possibility of requiring on site open space standards for SB 9 projects?

Potential outcomes of including open space standards include: preserving usable open space on a site for tenants and/or property owners, allowing for increased passive onsite drainage and water percolation, and potential incentivization of attached vs. detached units and two-story vs. one-story development.

Community Workshop

On May 17, 2022, a virtual Community Workshop was held to provide an overview of SB 9 and to seek initial feedback on the potential unit size maximums, maximum number of units appropriate for urban lot split projects, and if staff should explore open space requirements for SB 9 projects. Public outreach for the workshop included a newspaper notice, email outreach to the SB 9 interested party list, physical posting at five City facilities including the libraries and Central Park, and a notice in the City's eNews and the Community Development Department specific eNewsletter. There were ten attendees excluding City staff. A majority of participants identified as residents of San Mateo with the remainder evenly split between renters and those who work and/or would like to live in San Mateo. A survey was prepared to collect initial input on potential objective standards for SB 9 projects and is summarized below. Please see Attachment 6 for full survey results.

- Number of Units: One-third of respondents recommended limiting urban lot split project to 2 unit while the remaining two-thirds were evenly split between allowing 4 units per property or allowing 3-4 units per property depending on the underlying lot size.
- Maximum Unit Size: Two-thirds of respondents were in favor of allowing unit sizes in excess of 800 sq. ft. with the remainder in favor of limiting unit sizes to 800 sq. ft.
- Open Space Requirements: A majority of respondents were not in favor of establishing on site open space requirements for SB 9 projects.

NEXT STEPS:

Based on the initial input provided by the public and the City Council, staff will begin drafting a local SB 9 ordinance and code amendments to establish development standards consistent with State law. A second community workshop will be held during the ordinance drafting process in which additional community feedback on more refined potential development standards will be sought. A third City Council study session will be held prior to formal public hearings on this item. Staff anticipates bringing the draft SB 9 ordinance and zoning code amendments to the Planning Commission in the fall of 2022 and City Council in the winter of 2022. During this time, staff will continue to accept and process SB 9 applications under the State provisions and maintain the existing resource page on the City's website that provides information on SB 9 and the development standards established by State law.

BUDGET IMPACT:

Depending on the nature of the Council's direction, the costs associated with the research and development of the necessary code amendments and/or policies would be covered under the Community Development Department's existing operating budget. However, if the direction from Council results in the need to retain outside consultants to complete the work, the associated costs will require further evaluation to determine the appropriate funding source.

ENVIRONMENTAL DETERMINATION:

In accordance with Public Resources Code Section 21065, this item is not subject to CEQA, because it is an informational study session item that the City Council is not taking action on at this time.

NOTICE PROVIDED

All meeting noticing requirements were met.

ATTACHMENTS

Att 1 - Zoning Map (R1 Districts, One-Family Dwellings)
Att 2 – Zoning Map (R2 Districts, Two Unit Dwellings)
Att 3 – 1/2 Mile Transit Radius Map
Att 4 – SB 9 Implementation in Neighboring Jurisdictions
Att 5 – R2 Comparison Chart
Att 6 – SB 9 Community Survey Results
Att 7 – UC Berkeley Turner Center Study
Att 8 – Development Allowed by State Law - Graphic
Att 9 – Urban Lot Split Maximum Development Potential - Graphic
Att 10 – Potential Maximum FAR Table
Att 11 – Senate Bill 9 Government Code

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