



CITY OF SAN MATEO

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Agenda Report

Agenda Number: 4

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TO: Planning Commission
FROM: Christina Horrisberger, Director
PREPARED BY: Community Development Department
MEETING DATE: August 23, 2022
SUBJECT:
Recommendation – Draft SB 9 Ordinance

RECOMMENDATION:

Recommend to the City Council to adopt an Ordinance and associated text amendments to amend the San Mateo Municipal Code to add Chapter 27.21 "Two-Unit Development Overlay District" to implement the provisions of SB 9, amend Chapter 27.66 "Historic Preservation" to update the definition of "Individually Eligible Buildings," and adopt a resolution to establish interim objective design standards for single-family and duplex development.

BACKGROUND:

On September 16, 2021, the Governor signed Senate Bill 9 (SB 9) into state law, which allows qualifying single-family zoned parcels to be developed with two units (i.e. duplexes) and/or to be subdivided into two parcels through a ministerial¹ process.

Local jurisdictions may adopt ordinances to implement SB 9 locally but can only impose objective, zoning, design, and subdivision standards on qualifying SB 9 development. Furthermore, local jurisdictions are prohibited from applying any standard that would preclude the construction of two units that are up to 16 feet (ft.) tall, up to 800 square feet (sq. ft.) in size and at least 4 ft. from the rear and side property lines. A local agency may only deny a SB 9 development project if the Building Official makes written findings, based upon a preponderance of evidence that the project would have a specific, adverse impact on public health, safety, or the physical environment and where there is no feasible method to mitigate or avoid the impact.

Summary Overview

Chapter 27.21 "Two Unit-Development Overlay District"

SB 9 projects fall into two categories: 1) Development of up to two single-family units (attached or detached) on one parcel; and 2) Subdivision of one parcel into two parcels through an urban lot split with each resulting parcel eligible for two-unit development. The proposed ordinance adheres to the qualifying criteria, setback, height, parking, and urban lot split requirements of state law. Where local agencies can exercise discretion, the proposed ordinance also includes standards for courtesy noticing, demolition limits, maximum dwelling units for urban lot split projects, objective design standards, and unit size limits.

Interim Objective Design Standards

Per state law, development pursuant to SB 9 shall only be subject to objective standards. The City's Single-Family Dwelling

¹ Ministerial permits are granted at staff-level, require no public hearing or discretion, and are not subject to the California Environmental Quality Act (CEQA).

Design Guidelines and Duplex Design Guidelines contain very few “objective” standards. Consequently, SB 9 projects are not subject to most of the City’s current design regulations. Staff has proposed interim objective design standards to address this need. These standards are based on the Department’s multi-family and duplex objective design standards effort and include standards for privacy, window and door placement, massing and materials. These interim standards will be superseded by or amended to align with the final adopted version of the City’s Duplex and Multi-family Objective Design Standards when they are approved.

Proposed Amendments

Staff is proposing to update the definition of “Individually Eligible Buildings” contained in Chapter 27.66 “Historic Preservation” of the San Mateo Municipal Code to align with General Policy C/OS 8.1 to include buildings determined to be individually eligible for listing through documentation contained in a historic resources report.

Previous City Council Study Sessions and Community Workshops

At Study Sessions on February 22, 2022, and June 6, 2022, the City Council provided initial policy direction on six key topics: demolition limits, public noticing, potential map extensions, maximum dwelling units on lot split properties, unit size limits, and open space requirements. The City Council’s policy directions are incorporated into the draft ordinance and outlined in greater detail below.

Two community workshops were held on May 17, 2022, and August 8, 2022 where staff sought initial feedback on potential development standards and the major components of a proposed draft ordinance. See below for more details.

State Law Standards

Qualifying Criteria

1. Zoned single-family residential (i.e. R1-A, R1-B or R1-C); and
2. Not located in a historic district, included on the State Historic Resources Inventory, or listed as a city or county historic property, district, or landmark; and
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.); and
4. Has not been occupied by a tenant within the last three years; and
5. Does not involve the demolition of any affordable or rent controlled housing; and
6. Does not involve the demolition of more than 25 percent² of any existing exterior walls of any existing housing unit.

Development Standards

1. Setbacks
 - Minimum 4 ft. for rear and sides; front as required in the underlying district; and
 - No setbacks required for units constructed in same location and to the same dimensions of an existing legal structure.
2. Parking
 - One space maximum per unit; and
 - No parking required when a unit(s) is located within a one half-mile walking distance of a high-quality transit corridor (e.g. El Camino Real), major transit stop³, or within one block of a carshare facility.
3. Limits of Use
 - Prohibition on the establishment of short-term rentals in all units created through SB 9; and
 - Residential use restriction for units created through an SB 9 urban lot split.

² Per SB 9, demolition limits may be increased per local jurisdiction discretion.

³ 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.

Urban Lot Split Additional Standards

1. Parcel Size
 - 1,200 sq. ft. minimum lot size; and
 - Maximum 60/40 percent lot split size differential.
2. Parcel Width and Depth
 - Existing objective standards⁴ still apply so long as they do not preclude an otherwise compliant urban lot split.
3. Access
 - New parcels shall have access to, provide access to, or adjoin a private or public right-of-way.
4. Easements and Right-Of-Way Dedications
 - Easements for the provision of public services and facilities may be required by a local jurisdiction; and
 - Right-of-way dedications or requirements for off-site improvements may not be required by local jurisdictions.
5. Correction of Nonconformities
 - Correction of any existing legal nonconformities cannot be required for an urban lot split project.
6. Prohibited Actions
 - Prohibition of sequential lot splitting using SB 9.

City Council Study Sessions

Two City Council Study Sessions were held on February 22, 2022 and June 6, 2022. The Council provided initial policy direction to staff on six key areas where local jurisdictions can exercise discretion within the confines of the State Law. These policy areas are outlined below, along with the City Council's recommendations:

1. Demolition Limits

SB 9 Provision: Limited to 25% of existing exterior walls unless the limit is otherwise increased by the local jurisdiction.
City Council Recommendation: Increase demolition limits to 50%.
Reason: Allows potentially greater flexibility in building attached units and aligns with current city practices of triggering a Special Use Permit at 50% when a historic resources evaluation is required.
2. Public Noticing

SB 9 Provision: No noticing requirement nor prohibition exists within SB 9.
City Council Recommendation: Provide courtesy informational public notice prior to project approval.
Reason: Allows immediate neighbors to be informed about pending development and would align with the City's current ministerial building permit noticing practices for small second-story additions that do not require a planning application. The noticing would be information only because project approval would not be appealable.
3. Subdivision Map Extension

SB 9 Provision: Local jurisdictions may choose to increase the initial term of a subdivision map from 2 to 4 years.
City Council Recommendation: Do not increase map terms beyond existing allowance at this time.
Reason: The City currently requires a subdivision map to be recorded within 2 years of approval, but allows for extensions that can give an applicant up to 8 years to record before expiration. There have been no instances in which a map has failed to be recorded in the City due to these time limits.
4. Dwelling Unit Maximum for Urban Lot Splits

SB 9 Provision: A minimum of two dwelling units must be allowed on each lot created through an urban lot split. Local jurisdictions may increase this number to four dwelling units per lot.
City Council Recommendation: Limit urban lot split properties to a maximum of two dwelling units per lot at this time.
Reason: Such an approach is aligned with a majority of nearby Peninsula jurisdictions. In addition, there is an ability to revisit and amend the City's ordinance at any time to increase the maximum number of units permitted on a property created by an urban lot split.

⁴ San Mateo Municipal Code Sections [27.18.040](#) and [26.20.050](#)

5. Unit Size Limits

SB 9 Provision: Local jurisdictions shall ministerially approve up to two primary dwelling units of at least 800 sq. ft. each on qualifying single-family zoned parcels. Local jurisdictions have the ability to limit SB 9 units to a maximum of 800 sq. ft.

City Council Recommendation: Allow SB 9 units in excess of 800 sq. ft. as determined by the maximum floor area ratio (FAR) of the underlying zoning district, through the City's Single Family Dwelling Design Review (SFDDR) or Site Plan and Architectural Review (SPAR) discretionary review process.

Reason: Provides flexibility of unit size for property owners and aligns with the City's Accessory Dwelling Unit (ADU) regulations which allows units larger than 800 sq. ft.

6. Open Space Requirements

SB 9 Provision: There are no open space requirements in SB 9. Local jurisdictions may impose open space requirements so long as they do not preclude the construction of at least two 800 sq. ft. units, 16 ft. in height, with 4 ft. setbacks from the side and rear property lines.

City Council Recommendation: Do not impose open space requirements at this time.

Reason: Aligns with the R2 District in which there are no open space requirements.

The Council also requested information on SB 9 implementation in neighboring jurisdictions and for a comparison between SB 9 duplex development and R2 duplex development. A survey of surrounding jurisdictions ([Attachment 7](#)) found that many jurisdictions have restricted urban lot splits to a maximum of two dwelling units and have deferred to the maximum underlying FAR to determine maximum unit size above 800 sq. ft. A comparison of SB 9 duplex and R2 duplex development standards identified that R2 standards require larger lot sizes for subdivisions, greater rear and side yard setbacks, more required parking, and can accommodate 2-4 dwelling units compared SB 9 duplex development standards.

Community Workshops

Two community workshops were held on May 17, 2022 and August 8, 2022. The first workshop provided an overview of SB 9 and sought initial feedback on potential development standards. The second workshop focused on an introduction and overview of the draft ordinance and feedback. A summary of the public workshops follows:

Workshop #1 – May 17, 2022

Ten people attended the meeting. A majority of attendees 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 feedback on potential objective standards. Regarding number of units on urban lot split properties, one third of respondents favored a maximum of two units with the remaining two thirds evenly split between allowing three to four units per property. In addition, a majority of respondents were in favor of allowing unit sizes in excess of 800 sq. ft. and did not support establishing onsite open space standards for SB 9 projects. (See [Attachment 8](#) for full survey results).

Workshop #2 – August 8, 2022

A virtual workshop on August 8, 2022, which had up to 17 attendees, included a staff presentation on the major components of the draft ordinance, multiple interactive surveys, and concluded with a question and comment section. A majority of the attendees identified as residents of the City with the remainder split between those who work in the City and those who do not live in the City but would like to. Poll questions revealed that respondents were almost evenly split between requiring discretionary review for units greater than 800 sq. ft. and not requiring discretionary review for SB 9 units regardless of size. Regarding number of units permitted on urban lot split properties, 42% stated that lot split properties should be limited to 2 unit per property with the remaining respondents supporting 3-4 units either outright or through a tiered approach based on the size of the resulting lots. [Attachment 10](#) includes the full survey results and a more detailed breakdown of the public comments received which covered topics such as the proposed notification process, access requirements, and the proposed discretionary review process.

Public outreach for both workshops included email outreach to the SB 9 interested party list, posting on the City's social media sites, 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.

DISCUSSION:

Local Ordinance Overview

The intent of the proposed draft ordinance is to enact the provisions of SB 9 to allow additional units and/or lot splits in single-family zoned areas through a ministerial process. A summary of significant provisions of the proposed ordinance are provided below.

1. Review and Permitting Process

Two-unit development and/or urban lot split applications that meet objective standards will be processed with a ministerial planning application and be subject to the City's planning application review and noticing procedures. In line with current practices, approval of the ministerial planning application would be required prior to submittal of building permits for the proposed structure(s). Applications that do not meet objective standards will be processed with a discretionary planning application. For urban lot splits, no building permit may be submitted until the final map is recorded.

2. Two-Unit Development Standards

- *Demolition Limits.* Demolition of less than 50% of a structure's exterior structural walls or roof is subject to ministerial review. Demolition of 50% or more of a structure's exterior structural walls or roof may be permitted through discretionary review (SFDDR or SPAR permit) and issuance of a Special Use Permit (SUP) for the substantial removal of a residence consistent with current practices and regulations.
- *Setbacks.* The front setback of the underlying zoning district shall apply. A minimum setback of 4 ft. shall be required for side and rear yards.
- *Building Height.* Attached primary units would have a maximum plate height of 24 feet and peak height of 32 feet as allowed by the underlying zoning district. Detached primary units would have a maximum plate height of 16 feet and peak height of 24 feet to align with the City's ADU regulations.
- *Parking.* 0-1 off-street parking spaces as required by SB 9. Parking may be either covered or uncovered.
- *Number of Units.* A maximum of four dwelling units shall be allowed for SB 9 projects not created through an urban lot split.
- *Unit Size.* Units that are 800 sq. ft. or less in size will be subject to a ministerial process and the proposed interim objective design standards. Units larger than 800 sq. ft. would be allowed, as permitted by the lot's maximum FAR per the underlying zoning district, through either a SFDDR or SPAR discretionary permit. This permits the City to both allow larger sized units and also apply the established design guidelines on larger development applications that could be more prominent in a neighborhood.
- *Deed Restriction.* A deed restriction, in a form set by the City, that prohibits the establishment of short-term rentals on any unit created through SB 9 will be required.

3. Urban Lot Split Development Standards

- *Setbacks, Unit Size, Parking, and Building Height.* Two-Unit Development standards for setbacks, unit size, parking and building height shall also apply to urban lot split development.
- *Demolition Limits.* Same limits and process as Two-Unit Development except that projects that propose 50% or more demolition shall be subject to the issuance of a ministerial SUP.
- *Lot Size.* Lots shall be roughly equal in size (no more than 60% or less than 40% of the original parcel size) and shall be at least 1,200 sq. ft. in size as required by State law.

- *Number of Units.* Lots resulting from an urban lot split are limited to a maximum of two dwelling units (inclusive of ADUs and JADUs).
 - *Access.* All newly created parcels shall provide access to the right-of-way. If a flag lot (i.e. panhandle lot⁵) is proposed, an access corridor/driveway with a width of at least 10 ft. shall be required to allow for adequate emergency vehicle access.
 - *Occupancy Affidavit.* An applicant will be required to sign an affidavit stating that they intend to occupy one of the housing units as their principal residence for a minimum of three years from the date of project approval.
 - *Deed Restriction.* A deed restriction, in a form set by the City, that prohibits non-residential uses on any lot created through an urban lot split, the establishment of short-term rentals on any unit created through SB 9, and further subdivision of the parcel using the urban lot split provisions of SB 9 will be required.
4. Alternative Discretionary Review. To allow additional flexibility, projects that do not meet the objective development and design standards may be permitted through either a SFDDR or SPAR discretionary planning application. Such a process could be used to permit unit sizes larger than 800 sq. ft., increased height for detached units, and/or relief from an objective design standard. In no instance may an application for alternative review propose to: increase the FAR above that permitted by the underlying zoning district, further subdivide a parcel using SB 9, increase the number of maximum allowed dwelling units, propose a parcel size less than 1,200 sq. ft., or propose less than one off-street parking space when parking is otherwise required.
5. Interim Objective Design Standards. SB 9 and the Housing Accountability Act (HAA)⁶ mandate that qualified development proposals be subject to only those objective standards in effect at the time a permit is deemed complete. The City’s current Single-Family Dwelling Design Guidelines and Duplex Design Guidelines contain very few “objective” standards and would not be applicable to most ministerial SB 9 development. The proposed interim objective design standards (Attachment 2) are based on the Department’s current design guidelines and multi-family and duplex objective design standards effort and include standards for neighbor privacy, exterior lighting, massing, window and door placement, and consistency of colors, materials, and architectural styles for attached units. These standards are intended to be interim in nature and will either be superseded by or revised to align with the final adopted version of the City’s Duplex and Multi-family Objective Design Standards.

Text Amendments – Chapter 27.66 Historic Preservation

Per state law, the provisions of SB 9 do not apply to historic properties or historic resources. In reviewing the proposed draft ordinance for consistency with current City regulations regarding historic resources and preservation, staff discovered an inconsistency between the General Plan and Municipal Code.

Policy C/OS 8.1 of the General Plan defines a historic building to include “...buildings which are on or individually eligible for the National Register of Historic Places, California Register of Historical Resources, or Downtown Historic District contributor buildings as designated in the 1989 Historic Building Survey Report, *or as determined to be eligible through documentation contained in a historic resources report.*”

Chapter 27.66 of the Municipal Code defines a “historic building” as “all individually eligible buildings in the City, all individually eligible and contributor buildings within the Downtown Specific Plan area, and all structures located in the Downtown Historic District, as adopted by resolution of the City Council.” However, Section 27.66.020(c) limits the definition of individually eligible and contributor buildings to only “...those buildings as identified in the City of San Mateo

⁵ While the creation of new flag or panhandle lots are currently prohibited per Chapter 26 “Subdivisions” of the Municipal Code, SB 9 requires the City to allow flat lots or panhandle lots.

⁶ Housing Accountability Act (Government Code Section 65589.5) applies to housing project that consists of two or more units (inclusive of ADUs and JADUs) and requires housing projects to conform with objective standards only.

General Plan...buildings identified as [contributor building] and located within the Downtown Historic District as adopted by resolution of the City Council and identified in the City of San Mateo General Plan” and does not include provisions for buildings identified to be eligible through a historic resources report.

Staff has proposed following amendments to align the definition of “historic buildings” in the Municipal Code with that in the General Plan:

1. Revise Section 27.66.020(c) of the Municipal Code to amend the definition of individually eligible and contributor buildings to include buildings determined to be eligible for the National Register of Historic Places or California Register of Historical Resources through documentation contained in a historic resources report.
2. Revise Section 27.66.020(d) of the Municipal Code to amend individually eligible and contributor buildings for the purposes of Chapter 27.66 to also include buildings determined to be eligible for the National Register of Historic Places or California Register of Historical Resources through documentation contained in a historic resources report.

Staff has prepared a tracked changed ordinance showing the recommended edits in [Attachment 4](#).

Submitted SB 9 Projects

Since SB 9 became effective on January 1, 2022, the City has received one application for an urban lot split to demolish an existing residence, evenly split a 13,300 sq. ft. parcel and build one single-family residence and one ADU on each parcel. This application is still under review.

NEXT STEPS

Upon the Planning Commission’s recommendation, this item will be scheduled for public hearing before City Council for consideration and ordinance introduction. If approved, the ordinance will be brought back to City Council for adoption and go into effect 30-days thereafter. The Department is planning to provide an update to the City Council after the ordinance has been in effect for one year or after ten SB 9 applications have been processed, whichever happens first, to review effectiveness of the ordinance and determine if any adjustments or updates are warranted.

PUBLIC COMMENTS:

Staff has received one public comment on the proposed draft ordinance and standards since the June 6, 2022 City Council Study Session. This comment focused on the potential permit process for SB 9 applications and maximum unit size limits. Three additional inquiries have also been received about potential development pursuant to SB 9. Any public comments received after publication of this agenda report will be forwarded to the Planning Commission for consideration at the public hearing and will be posted to this item online as “Post Packet Public Comments.”

ENVIRONMENTAL DETERMINATION:

An ordinance adopted to implement SB 9 shall not be considered a project under the California Environmental Quality Act (CEQA) and is exempt from CEQA review per Government Code Sections 65852.21(j) and 66411.7(n), which state that the adoption of an ordinance by a city or county implementing the provisions of Government Code Section 65852.21 and 66411.7 and regulating two-unit development and urban lot split projects are statutorily exempt from the requirements of CEQA. The proposed text amendment to Chapter 27.66 of the Municipal Code is also separately and independently exempt from CEQA, pursuant to Section 15061(b)(3), which provides a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

NOTICE PROVIDED:

In accordance with Government Code Sections 65090 and 65091 and the City’s Municipal Code public noticing requirements, the notice for this public hearing was published in a local newspaper of general circulation, posted in three public facilities, and noticed to the following parties at least ten (10) days in advance of Planning Commission meeting:

- The City’s “900 List” which contains nearly 100 Homeowner Associations, Neighborhood Associations, local utilities, media, and other organizations interested in citywide planning projects;
- The City’s Planning “Notify Me” email list; and

- The interested parties list, which includes interested individuals who contacted the City and requested to be added to the project notification list.

ATTACHMENTS

Att 1 – Draft SB 9 Ordinance
Att 2 – Draft Interim Objective Design Standards Resolution
Att 3 – Proposed Code Amendments (Chapter 27.66)
Att 4 – Proposed Code Amendments (Chapter 27.66) – Track Changes
Att 5 – Zoning Map - R1 Districts
Att 6 – Half-Mile Transit Radius Map
Att 7 – SB 9 Implementation in Neighboring Jurisdictions
Att 8 – R2 District Comparison Chart
Att 9 – Community Workshop #1 Survey Results
Att 10 – Community Workshop #2 Survey Results
Att 11 – Senate Bill 9 Government Code

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