



CITY OF SAN MATEO

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Agenda Report

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TO: City Council
FROM: Drew Corbett, City Manager
PREPARED BY: Community Development Department
MEETING DATE: September 19, 2022
SUBJECT:
Ordinance Introduction - Senate Bill (SB 9)

RECOMMENDATION:

Introduce an ordinance 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 SB 9 development.

BACKGROUND:

Effective January 1, 2022, Senate Bill 9 (SB 9) seeks to increase housing production in single-family zoned areas (see [Attachment 4](#)) by allowing 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. Two main types of development can occur under SB 9: 1) Two-Unit (Duplex) development and 2) Urban Lot Splits where a lot can be split into two and duplex development can occur on each lot.

The City has elected to adopt an ordinance to implement the provisions of SB 9 locally. In two City Council Study Sessions held in February and June of 2022, and two community workshops held in May and August of 2022, staff gathered feedback and initial policy guidance on potential development standards to include in the draft ordinance. On August 23, 2022, the Planning Commission recommended the City Council approve the draft ordinance with a recommendation to increase demolition and height limits for SB 9 units, remove discretionary review for units over 800 square feet in size, increase the number of units permitted on urban lot split properties, remove access corridor requirements for properties that do not require parking, and remove window glazing requirements for certain second story windows. These recommendations with staff responses are further discussed below as some of the recommendations from the Planning Commission were inconsistent with the City Council policy direction at the study sessions.

Summary of City Council Study Sessions

The City Council provided feedback on six policy areas relating to SB 9, with the following direction on each topic:

1. *Demolition Limits* – Increase demolition limits from 25% to 50% to be consistent with existing zoning requirements.
2. *Public Noticing* – Provide a courtesy informational public notice prior to project approval.
3. *Subdivision Map Extension* – Do not increase map terms beyond existing allowance (of up to 8 years).
4. *Dwelling Unit Maximum for Urban Lot Splits* – Limit urban lot split properties to 2 dwelling units per lot.

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

5. *Unit Size Limits* – Allow units greater than 800 square feet as determined by the maximum floor area ratio (FAR) of the underlying zoning district through a discretionary review process.
6. *Open Space Requirements* – Do not impose open space requirements.

Requested information on how SB 9 is implemented in neighboring 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 square feet.

The agenda reports, meeting minutes and videos for the February and June City Council study sessions are available online at this [link](#).

DISCUSSION:

This report introduces a local SB 9 draft ordinance that is aligned with State law and incorporates Council direction. In addition, staff is proposing:

- Interim objective design standards applicable to all SB 9 development to address the lack of objective standards in the City's existing residential design guidelines, and
- Minor changes to the municipal code's definition of historic structures to align the municipal code with the General Plan and codify current City practices to be consistent with the California Environmental Quality Act (CEQA).

Draft Ordinance Overview

1. Review and Permitting Process

Applications that meet objective standards will be processed ministerially subject to the City's review and noticing procedures. Project approval would be required prior to submittal of building permits. For urban lot splits, no building permit may be submitted until the final map is recorded.

2. Two-Unit Development Standards

A. Demolition Limits

- Ministerial Permit: Less than 50% demolition of a structure's exterior structural walls or roof.
- Discretionary Permit: 50% or more demolition subject to existing Code requirements (Sec. 27.18.035).

B. Setbacks

- Front: District setbacks apply.
- Side and Rear: Minimum 4 ft.

C. Building Height

- Attached Units: 24 ft. maximum plate and 32 ft. maximum peak height (follows underlying R1 District)
- Detached Units: 16 ft. maximum plate and 24 ft. maximum peak height (follows current ADU standards)

D. Parking

- 0-1 spaces as required by SB 9. (See [Attachment 5](#) for ½ mile transit radius map where 0 spaces may be permitted)
- Parking may be covered or uncovered.

E. Number of Units

- Maximum of 4 units (two SB 9 units, an ADU and a JADU) on a parcel not created through an urban lot split.

F. Unit Size

- Ministerial: Units ≤ 800 sq. ft. in size.
- Discretionary: Units > 800 sq. ft. in size.
- Maximum Size: 800 sq. ft. when a lot has reached its maximum FAR. Units size over 800 sq. ft. dictated by maximum FAR of the underlying zoning district.

G. Deed Restriction

- Prohibition on the establishment of short-term rentals for any unit created through SB 9.

3. Urban Lot Split – Additional Development Standards

A. Number of Units

- Maximum of two dwelling units per lot (inclusive of ADUs and JADUs).

B. Access

- All newly created parcels shall provide access to the nearest public street right-of-way.
- Newly created flag lots (i.e. panhandle lots) shall provide a minimum 10-foot wide driveway/access corridor for adequate vehicle and emergency access.

4. Alternative Discretionary Review. To allow additional flexibility, projects that do not meet objective development and design standards may be permitted through a discretionary review process. This process could be used for increased height for detached units, to permit unit sizes larger than 800 sq. ft. and/or for relief from an objective design standard. In no instance may an application for alternative review propose to: 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.

Interim Objective Design Standards

SB 9 development is only subject to objective standards in effect at the time a permit is deemed complete. To address the lack of objective standards in the City's existing Single-Family Dwelling Design Review and Duplex Design Guidelines, staff has proposed interim design standards ([Attachment 2](#)) such as standards for neighbor privacy, exterior lighting, massing, window and door placement, and consistency of colors, materials and architectural styles for attached units, that would be applicable to SB 9 development. These standards are based on the current design guidelines and the Department's multi-family and duplex objective design standards effort. 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

The provisions of SB 9 do not apply to federal, state, or local historic properties or historic resources. In reviewing the proposed draft ordinance for consistency with current City regulations, staff identified a discrepancy between the General Plan and Municipal Code regarding individually eligible historic resources and proposes the following text amendment to better align the zoning ordinance with the General Plan and current practice.

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 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 individually eligible through a historic resources evaluation (HRE) report prepared by a licensed historic professional.

Currently, when 50% or greater demolition of a structure that is more than 45-years old is proposed, staff requires a HRE to be prepared by or peer reviewed by an independent City-approved historic professional to determine if the structure is eligible for listing before it can be substantially altered or demolished. This practice is consistent with the General Plan policy C/OS 8.1 and environmental review thresholds pursuant to CEQA.

To establish consistency between the General Plan and Municipal code, and to ensure consistency with CEQA requirements, staff is proposing minor amendments to the Municipal Code that would revise Section 27.66.020(c) and (d) to amend the definition of "Individually Eligible" and "Contributor Buildings" to also include buildings determined to be eligible for listing on the National Register of Historic Places or California Register of Historical Resources through

documentation contained in an HRE. A track changes version of the ordinance showing the recommended edits is included in [Attachment 4](#).

It is important to note that the proposed amendments would continue the current practice that HREs be prepared and/or peer-reviewed by a City approved licensed historic professional. The proposed amendments do not affect historic districts as the amendments are to allow for individually eligible historic resources to be determined through an HRE.

Since these amendments to Chapter 27.66 are not directly associated with SB 9, the City Council has the option to adopt them with the SB 9 Ordinance, or defer them to a later date when they can be considered as part of a more comprehensive Historic Preservation Ordinance update.

Planning Commission Recommendations

On August 23, 2022, the Planning Commission held a public hearing and voted 4-0 (with 1 absence) to recommend approval of the proposed draft ordinance and interim objective design standards with the following modifications, and to *not* recommend approval of the proposed code amendments to Chapter 27.66 of the Municipal code. The formal recommendations of the Planning Commission are outlined below along with staff responses.

Draft Ordinance:

1. Demolition Limits

Planning Commission Recommendation: Allow up to 100% demolition through a ministerial permit provided the project conforms to objective design standards.

Staff Response: The City Council provided guidance to increase demolition limits from 25% to 50%, consistent with existing demolition thresholds within the Municipal Code. The Planning Commission's recommendation to allow up to 100% demolition through a ministerial process would affect the preservation of existing housing stock, could result in loss of individually eligible historic resources, and would be inconsistent with existing Zoning Code requirements. Staff's recommendation aligns with [Section 27.18.035](#) (Substantial Removal of Existing Residence) of the Municipal Code that requires a Special Use Permit (SUP) and potential historic resources evaluation² for the major demolition of a structure.

2. Dwelling Unit Maximum for Urban Lot Splits

Planning Commission Recommendation: Through a tiered approach, allow 3-4 units per lot on urban lot split properties based on the size of the resulting lots.

Staff Response: The City Council provided guidance to limit urban lot split properties to a maximum of two dwelling units, which aligns with a majority of surrounding jurisdictions. Staff intends to provide the City Council an update on the effectiveness of the ordinance to determine if any adjustments or updates are warranted such as increasing the number of units permitted or allowing for a tiered approach. Staff would like direction on whether an update should be provided after ten SB 9 applications have been process or within one year, whichever occurs first, or if an update should be provided after ten applications have been processed or within three years, whichever occurs first. Due to a lack of current SB 9 applications (only one application has been submitted), a longer time horizon may be more beneficial as it is likely that there would be more case law at that time and/or there would be a larger sample size of City SB 9 applications to evaluate.

3. Unit Sizes

Planning Commission Recommendation: Remove discretionary review for unit sizes over 800 square feet (sq. ft.) provided the project conforms to objective design standards, allow larger unit sizes as determined by maximum FAR of the underlying zoning district through a ministerial process, and allow at least one unit to be up to 1,200 sq. ft. even if total cumulative development exceeds the maximum FAR.

Staff Response: The City Council recommended allowing unit sizes greater than 800 sq. ft. but expressed concerns related to maximum density/intensity of development on smaller sized parcels. Requiring discretionary review for

² A historic resources evaluation (HRE) is only required if 50% or more demolition *and* where the structure proposed for removal is over 45 years old.

units larger than 800 sq. ft. and limiting units to 800 sq. ft. (as opposed to 1,200 sq. ft.) when a parcel has already achieved its maximum FAR is consistent with the requirements of SB 9 and addresses the Council's concern related to density/intensity of development by providing oversight for larger sized units that could potentially be more impactful to adjacent properties.

4. Building Height

Planning Commission Recommendation: Remove the lower height restrictions for detached units and allow all units to achieve the maximum plate and peak height of the underlying zoning district when outside the required setback areas.

Staff Response: Staff sought to align the height limits for SB 9 units with the City's ADU regulations as these structures are viewed and treated similarly by the State in terms of setbacks (4 ft. side/rear), unit size (up to 800 sq. ft.), and height (up to 16 ft.). Staff recommends a 24 ft. plate height and 32 ft. peak height for attached units and a 16 ft. plate height and 24 ft. peak height for detached units. This is consistent with the City's ADU regulations, encourages the development of attached units to preserve usable open space on a property, and seeks to lessen potential privacy impacts to adjacent properties. Detached units may exceed their 16 ft. plate and 24 ft. peak height limits through a discretionary review process in which potential privacy and visual impacts that may occur with a two-story structure 4 ft. from the side and rear property lines would be assessed.

5. Access

Planning Commission Recommendation: Require a 10 ft. access easement/corridor only when parking is required or when necessary per the fire code.

Staff Response: Staff recommends retaining an access corridor requirement for newly created flag lots or landlock parcels, which would provide emergency vehicle access (i.e. fire/emergency services vehicles), an area for the provision of public services (i.e. water, sewer, underground electrical connections etc.), personal access (vehicle or otherwise) to the property, potential space to accommodate additional off-street parking, and conforms with the City's current driveway requirements. If a property cannot accommodate a 10 ft. wide access corridor, the discretionary review process could be available to assess alternative access configurations.

Interim Objective Design Standards:

6. Planning Commission Recommendation: Remove the second story window glazing requirement.

Staff Response: Staff recommends retaining the window glazing requirement, which matches the privacy requirements contained in the City's ADU regulations as SB 9 and ADU development have similar heights, setbacks, and size limits and could result in very similar development and potential impacts.

Text Amendments – Historic Preservation: Definition of “Individually Eligible Buildings”

7. Planning Commission Recommendation: Do not update the definition of individually eligible buildings.

Staff Response: The City's 1989 historic survey was not inclusive of the whole City and it is known that not all individual historic resources in the City were identified in the report. The Planning Commission raised a concern that an HRE could be prepared by anyone and identify a property or grouping of properties as individually eligible, thus exempting them from SB 9. However, the purpose of an HRE is to provide additional evaluation of an individual structure that is 45-years or older and serves to protect a potential historic resource before it is substantially altered or demolished. These reports are independently prepared, or peer reviewed, by a City approved historic consultant and are used to evaluate individual properties. Establishment of a historic district follows a separate process and requires recognition by the City Council or the State. As noted above, the proposed amendments are intended to codify current practices and to align with the General Plan and CEQA.

Unless Council wishes to revisit its previous direction to staff in response to the Planning Commission's recommendations and discussion, staff is not currently recommending the above changes.

Additional Planning Commission Comments:

While not part of the formal recommendation, individual Planning Commissioners also made comments related to reducing the minimum size of a projection from 18-inches to 12-inches or less and a general comment that interim design standards may not be necessary and to only apply the final Duplex and Multi-Family Objective Design Standards to SB 9

applications once it is adopted. Individual Commissioners also raised concerns that the prohibited exterior materials listed in the interim objective design standards are too restrictive and could increase the cost of development, which would make SB 9 development less attractive/feasible for property owners. The prohibition of some exterior finishes such as plywood and vinyl outlined in the interim objective design standards is to ensure development consists of high quality and durable materials. A prohibited exterior material may still be proposed through the discretionary review process where staff would review to ensure that the material would still result in a durable and high-quality structure. No change to the interim objective standards are recommended.

Submitted SB 9 Projects

The City has received one application for an urban lot split to demolish an existing residence, evenly split a 13,300 square-foot parcel and build one single-family residence and one ADU on each parcel. This application is currently under review.

PUBLIC ENGAGEMENT, OUTREACH, AND COMMENTS:

Previous Community Workshops

Two community workshops were held on May 17, 2022 and August 8, 2022. Ten to seventeen people attended these workshops with a majority identifying as residents of the City. Surveys from both workshops found that a majority of respondents were in favor of allowing unit sizes in excess of 800 sq. ft. but were almost evenly split between requiring discretionary review for units greater than 800 sq. ft. versus not requiring discretionary review for units regardless of their size. A majority of attendees also supported allowing 3-4 units either outright or through a tiered approach based on the size of the resulting lots for urban lot split properties. (Survey results and further discussion can be found in the August 23, 2022 Planning Commission Report [here](#)).

No public comments on the draft ordinance have been received. Public comments received after the publication of this report will be forwarded to the City Council for consideration at the public hearing and will be posted to this item online as “Post Packet Public Comments.”

BUDGET IMPACT:

Updates to the City’s Municipal Code to align with State law are fully funded by the Community Development Department’s annual budget with no additional impact to the General Fund.

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

All meeting noticing requirements were met.

ATTACHMENTS

- Att 1 – Draft SB 9 Ordinance
- Att 2 – Draft Interim Objective Design Standards Resolution
- Att 3 – Proposed Code Amendments (Chapter 27.66) – Track Changes
- Att 4 – Zoning Map - R1 Districts
- Att 5 – Half-Mile Transit Radius Map
- Att 6 – SB 9 Implementation in Neighboring Jurisdictions
- Att 7 – R2 District Comparison Chart
- Att 8 – Senate Bill 9 Government Code
- Att 9 – August 23, 2022 Planning Commission Minutes

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