



MEMORANDUM

DATE: November 10, 2022
TO: Planning Commission
FROM: Planning Staff
SUBJECT: Workshop – Overview and Discussion of New State Housing Laws

OBJECTIVE

The purpose of tonight's workshop is to dive into several new State housing laws effective in 2022 and taking effect in 2023 that impact the City's zoning regulations.

BACKGROUND

For the past several years, the State has implemented various laws to encourage residential development by reducing or eliminating local control over how municipalities permit and review certain types of residential development applications. The most prominent examples of these changes in Brisbane are to the City's accessory dwelling unit (ADU) regulations and the City's residential design review procedures relative to the adoption of objective design standards.

The laws we'll review tonight build upon this trend with further reaching impacts to the City's zoning regulations:

- SB 9 (effective 1/1/2022): Allows smaller lot sizes and duplex conversions without discretionary review in single-family zoning districts, provided numerous requirements are met.
- SB 478 (effective 1/1/2022): Sets minimum FARs and eliminates lot size minimums for multi-family or mixed-use developments of 3-10 units.
- AB 2011 and SB 6 (effective **7/1/2023**): Allows eligible residential development on commercially zoned land, subject to numerous restrictions and criteria.

DISCUSSION

SB 9: Ministerial lot splits and duplex conversions

SB 9 establishes a ministerial (non-discretionary) approval process for property owners in the R-1 and R-BA residential districts to subdivide their property into two lots that are smaller than the district's minimum lot size requirement. It also allows single-family property owners to convert existing structures or build new duplexes on single-family lots. Applied for simultaneously, it could result in four homes being constructed on properties that otherwise would be limited to two homes (single-family plus an accessory dwelling unit) by the zoning regulations. Attachment A provides an overview of different scenarios that property owners could pursue under SB 9.

SB 9 does not reduce lot sizes or change permitted uses across the board; property owners must invoke its requirements for a specific project. Further, there are numerous caveats and eligibility criteria embedded into SB 9 that are intended to limit speculative use of the statute and ensure it results in the modestly scaled infill development the legislature intended.

Criteria include:

- New units may be limited to 800 sq ft in floor area
- Property owners must reside on one of the properties or units for at least 3 years
- One parking space may be required per unit
- New lots must be roughly the same size and no less than 1200 sq ft
- Properties may only be subdivided once - no serial subdivisions
- Properties with habitat for listed species are ineligible
- Properties occupied by tenants in the past three years are ineligible

Additional limitations are noted in Attachment A.

When considering how the City may implement SB9 here are a few discussion points for the Commission’s consideration:

- Should the City allow units larger than 800 sq ft to be developed on lots resulting from lot splits or new duplex units?
 - o Consider now: The City may limit units to 800 sq ft and may only require 1 parking space for those units. However, the City could consider allowing larger units if additional parking is provided in line with existing parking requirements.
 - o Consider later: Program 2.A.5 of the draft Housing Element proposes studying zoning districts where reductions to minimum lot sizes may be appropriate to allow infill development of small homes. Consideration of larger unit sizes and appropriate development standards could be deferred to this more comprehensive future study.

SB 478: Increased FAR and No Minimum Lot Size for 3-10 Unit Developments

Floor area ratios (FAR) control the massing of a building on a lot and are calculated as a ratio of the total floor area of all structures on a given lot divided by the lot size (see Table 1 below for examples of square footages resulting from FARs). Floor area includes the square footage of all floors of a building or structure with at least 6 ft of interior floor to ceiling height, measured from the interior face of exterior walls. Maximum residential FARs in multi-family residential and mixed-use districts are shown in the table below.

Table 1. Multi-Family and Mixed-use District FARs and Minimum Lot Sizes

District	Max. FAR	Min. Lot Size	Max. Sq Ft (standard lot)
R-2	0.72	5,000 SF* (2,500 SF/unit)	3,600 SF
R-3	0.72	5,000 SF*; (1,500 SF/unit)	3,600 SF
NCRO-2	2.4	2,500 SF	6,000 SF
SCRO-1	2.8	7,500 SF (1,500 SF/unit for 3+ units)	21,000 SF

*4,950 SF acceptable for 2-unit development

SB 478 mandates that cities allow at least a 1.0 FAR for 3-7 unit developments and at least a 1.25 FAR for 8-10 unit developments, and prohibits applying minimum lot size requirements so long as the property is a legal lot. The City may still apply objective design standards and parking requirements so long as they would not physically preclude the project from achieving the allowed FAR. To comply, the City will need to amend the maximum FAR in the R-2 and R-3 districts and the minimum lot sizes in the R-2, R-3, NCRO-2, and SCRO-1 districts for 3-10 unit residential and mixed-use projects only. Current standards will remain in effect for 1-2 and 11+ unit developments.

AB 2011 and SB 6: Residential Development in Commercial Districts

These two laws allow a developer to propose a residential or mixed-use development in commercial zoning districts without requiring a zoning amendment. In Brisbane, the impacted commercial districts are limited to the NCRO districts and SP-CRO districts based on the criteria in the statute. There are a couple key differences between the two laws that are summarized in detail in Attachment B. Notably, AB 2011 projects must provide a certain amount of affordable housing, must be reviewed ministerially, and are exempt from CEQA, while SB 6 projects are subject to typical review procedures under the Housing Accountability Act and are not exempt from CEQA unless the developer invokes other streamlining statutes (e.g., SB 35). Both AB 2011 and SB 6 projects must conform with objective design standards in effect at the time a development application is submitted.

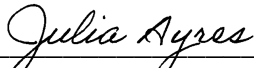
In 2022 the City adopted objective design standards that would apply to both AB 2011 and SB 6 projects, and procedures for streamlined project review that would apply to AB 2011 projects. Some adjustments may be required to those ordinances to reflect the specific standards and processes in the statutes. However, the City Council deferred adopting objective standards for the NCRO districts until further study could be completed. It is anticipated this work will occur in the spring and summer of 2023. The effective date of AB 2011 and SB 6 is July 1, 2023.

NEXT STEPS

Staff anticipates presenting a draft ordinance implementing SB 9 and SB 478, which are already in effect, to the Commission in January 2023, with adoption by the City Council following in February. Implementation of AB 2011 and SB 6 will require additional studies and engagement related to objective standards applicable to the NCRO districts; a specific work plan will be provided in January 2023.

ATTACHMENTS

- A. [SB 9 Handout](#)
- B. [AB 2011 and SB 6 Handout from ABAG](#)



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