

## PLANNING COMMISSION AGENDA REPORT

**Meeting Date:** April 18, 2024

**Subject** SB9 Regulations – Housing Element Implementing Ordinance

**Prepared by:** Stephanie Williams, Deputy Director

**Reviewed by:** Nick Zornes, Development Services Director

**Initiated by:**

City of Los Altos adopted 6th Cycle Housing Element, Program 1.M: SB9 Implementation

**Attachment(s):**

1. Draft Ordinance
2. Existing SB9 Regulations
3. SB9 Fact Sheet – California Department of Housing and Community Development (HCD)

**Environmental Review:**

The Ordinance is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15061(b)(3) (Common Sense Exemption) because it can be seen with certainty that the adoption of the regulations will not have a significant effect on the environment.

**Staff Recommendation:**

The Planning Commission recommend the City Council introduce and adopt the Draft Ordinance as presented tonight.

**Background**

California Senate Bill 9 Overview

California Senate Bill 9 (SB 9) requires ministerial approval of certain housing development projects and lot splits on an R1 (Single-Family Residential) zoned property. SB 9 was passed by the California Legislature in 2021 and took effect January 1, 2022.

SB 9 requires approval of the following:

- Two primary units. Two units on an eligible R1 lot (whether the proposal adds two new units or adds one unit and keeps an existing unit).



**Subject:** SB9 Regulations – Housing Element Implementing Ordinance

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- Urban lot split. A one-time subdivision of an eligible R1 lot into two lots. This would allow up to four units (two units on each lot).

SB 9 also requires that jurisdictions review and approve all SB 9 projects ministerially without discretionary review or public hearing; may only apply objective zoning, subdivision, and design standards; and these standards may not preclude the construction of up to two units of at least 800 square feet each on each lot with minimum 4' side and rear setbacks. This law is similar to State ADU legislation in that it allows jurisdictions to apply local objective standards, as long as they do not prevent the development of new residential development to provide for increased housing opportunities which comply with SB9's regulations.

Although SB 9 allows cities to create objective development standards, SB 330, as amended by SB 8 in 2021 (Housing Crisis Act of 2019), limits the ability for cities to add new standards. Specifically, the Housing Crisis Act prohibits cities from reducing the intensity of land use within an existing residential zoning district below what was allowed and in effect on January 1, 2018. Reducing intensity includes, but is not limited to: reductions to height, density, floor area ratio (FAR); new or increased open space or lot size requirements; new or increased setback requirements; or any standard that would lessen the intensity of housing.

#### Existing City SB9 Regulations

The City previously considered and adopted an SB9 Implementation Resolution on December 14, 2021, in anticipation of SB9 going into effect on January 1, 2022 (see Attachment 2). These regulations were intended to assist staff and the public with reviewing SB9 applications consistent with State Law and establish objective design standards for residential units developed under the regulations. Council also directed staff to return to City Council by May 2022 to report on SB9 implementation and any recommendations on potential amendments that may be prudent after the review of applications. Due to staff shortages, turnover and other priorities, especially the Housing Element Update, efforts to return to Council by May 2022 were delayed.

Staff proposes to largely maintain existing SB9 development standards and objective design standards and adjust standards where they do not align with the implementation of minimum SB 9 requirements or were found to be problematic through implementation over the last two years.

#### 6th Cycle Housing Element 2023-2031

On January 24, 2023, the City adopted the 6th Cycle Housing Element 2023-2031 which included *Program 1.M: SB 9 Implementation*; which requires the City to ensure that its local SB9 ordinance remains consistent with State law. Additionally, the City is to monitor and report on the



**Subject:** SB9 Regulations – Housing Element Implementing Ordinance

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effectiveness of the City’s SB9 standards and report its findings and any recommendations on amendments which are appropriate to facilitate SB9 applications.

The Draft Ordinance is an implementing ordinance of the City’s adopted Housing Element. Should the City of Los Altos not proceed with the implementing actions discussed in this report, the City will be vulnerable to penalties and consequences of housing element noncompliance. HCD is authorized to review any action or failure to act by a local government that determines is inconsistent with an adopted housing element or housing element law. This includes failure to implement program actions included in the housing element. HCD may revoke housing element compliance if the local government’s actions do not comply with state law. Examples of penalties and consequence of housing element noncompliance include:

- **General Plan Inadequacy:** the Housing Element is a mandatory element of the General Plan. When a jurisdiction’s housing element is found to be out of compliance, its General Plan could be found inadequate, and therefore invalid. Local governments with an invalid General Plan can no longer make permitting decisions.
- **Legal Action and Attorney Fees:** local governments with noncompliant housing elements are vulnerable to litigation from housing rights’ organization, developers, and HCD. If a jurisdiction faces a court action stemming from its lack of compliance and either loses or settles the case, it often must pay substantial attorney fees to the plaintiff’s attorneys in addition to the fees paid by its own attorneys. Potential consequences of lawsuits include mandatory compliance within 120 days, suspension of local control on building matters, and court approval of housing developments.
- **Loss of Permitting Authority:** courts have authority to take local government residential and nonresidential permit authority to bring the jurisdiction’s General Plan and housing element into substantial compliance with State law. The court may suspend the locality’s authority to issue building permits or grant zoning changes, variances, or subdivision map approvals – giving local governments a strong incentive to bring its housing element into compliance.
- **Financial Penalties:** court-issued judgement directing the jurisdiction to bring its housing element into substantial compliance with state housing element law. If a jurisdiction’s housing element continues to be found out of compliance, courts can multiply financial penalties by a factor of six.
- **Court Receivership:** courts may appoint an agent with all powers necessary to remedy identified housing element deficiencies and bring the jurisdiction’s housing element into substantial compliance with Housing Element law.



**Subject:** SB9 Regulations – Housing Element Implementing Ordinance

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### SB9 Project Review Update

The proposed codification of SB9 regulations in the Zoning Ordinance and analysis contained in this report reflect staff’s utilization of the existing regulations over the past approximately two years and include recommendations on amendments. Since the law took effect on January 1, 2022 until the writing of this report, the City has received nine (9) urban lot split applications and eighteen (18) SB9 residential development applications. Minor changes are recommended to the existing regulations to improve implementation consistent with State law, clarify language, or align with modified City practices or laws.

Two changes reflected in the proposed Ordinance which align with the recent City ADU regulation changes include the removal of a daylight plane requirement and language regarding voluntary setbacks. Because the side and rear setbacks for developments are reduced from standard R1 zoning setbacks, the daylight plane requirement is removed as it is unenforceable and impossible to “protect” a daylight plane with a structure that is allowed four feet from a property line. The voluntary additional setback is intended to reduce the privacy impacts to abutting property owners, and applicants are encouraged to voluntarily increase the setbacks. Although this language is not in conflict with any State laws, the inclusion of such language within the ordinance creates a false sense of certainty for unenforceable setbacks between opposing parties, and results in City staff playing mediator of residents.

### **Discussion/Analysis**

The following is a summary of the proposed Ordinance which largely reflects the existing City’s existing implementing regulations and State law.

#### Urban Lot Splits

Pursuant to SB 9, eligible R1-zoned lots may be subdivided into two lots through a process which does not require discretionary review or public hearing. This type of subdivision is defined in the Ordinance as an “urban lot split.”

Through an urban lot split, an eligible R1-zoned property can be subdivided into two roughly proportional lots. To ensure rough proportionality, SB 9 specifies one lot cannot be less than 40% the size of the original lot to be subdivided and a minimum lot size of 1,200 square feet. Additionally, the following restrictions and requirements apply to urban lot split applications:

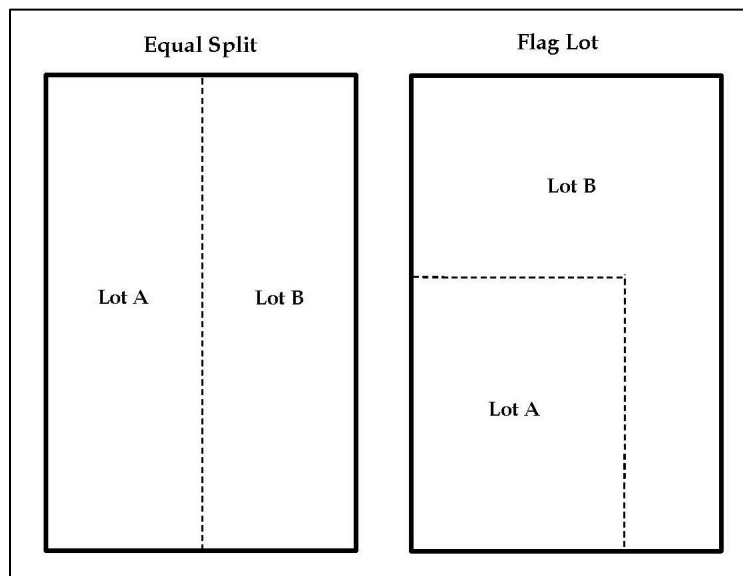
- Lots must adjoin a public or private street with a minimum width of 20 feet.
- May require easements for public services and facilities (e.g., utilities).
- Must meet the property eligibility criteria.



**Subject:** SB9 Regulations – Housing Element Implementing Ordinance

- Must require the applicant to sign an affidavit acknowledging the applicant intends to reside in one of the properties as their primary residence for a minimum of three years.

The following graphic demonstrates two possible ways to subdivide a typical single-family lot into two roughly proportional lots with the minimum lot standards.



### SB9 Residential Developments

In addition to urban lot split provisions, SB 9 requires local agencies to allow the development of two units on each eligible R1-zoned lot. The residential development provisions can be used with the urban lot split standards, resulting in a maximum potential of four primary-dwelling units. In other words, if a lot is subdivided by an urban lot split, each resulting lot may contain two primary-dwelling units.

The provisions of SB 9 are utilized in concert with existing ADU/JADU regulations but do not require local agencies to allow any R1 lot to be developed with more than four units, inclusive of ADUs/JADUs. Based on staff's recommendation to strictly comply with SB 9, the following development scenarios will be possible when the existing ADU/JADU provisions are applied with the provisions of SB 9:

- a. No more than two (2) primary dwelling units are permitted on a single existing lot or newly created lot through an urban lot split.



**Subject:** SB9 Regulations – Housing Element Implementing Ordinance

- b. For existing lots not established through an urban lot split, in addition to a primary dwelling unit(s) an accessory dwelling unit(s) and/or a junior accessory dwelling unit(s) may also be allowed for a maximum of four (4) total units (inclusive of primary units, accessory dwelling units and junior accessory dwelling units).
- c. For lots established through an urban lot split, in addition to a primary dwelling unit, a second primary unit or an accessory dwelling unit or junior accessory dwelling unit may also be allowed for a maximum of two (2) units per resulting lot (inclusive of primary units, accessory dwelling units and junior accessory dwelling units)

The following graphic demonstrates different ways in which the four units allowed under SB 9 can be achieved.





**Subject:** SB9 Regulations – Housing Element Implementing Ordinance

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SB 9 includes the following mandatory standards that all local jurisdictions must implement for the development of units:

- No more than 4' side and rear setbacks for new structures; no minimum setbacks for retention of existing structures.
- Minimum unit size of 800 square feet.
- No more than one parking space per unit; however, properties within a one-half-mile walking distance of high-quality transit or major transit stops, as defined by State law, or within one block of a car-share vehicle location, do not need to provide parking.
- Cannot require the correction of existing nonconforming zoning conditions or deny a development due to existing nonconforming conditions.
- Must meet the property eligibility criteria.
- Must require the applicant to sign an affidavit acknowledging the applicant intends to reside in one of the existing or proposed housing units as their principal residence for a minimum of three years.

The Draft Ordinance includes objective development standards and design standards for the development of residential units under SB9 which incorporate these mandatory standards as well as other objective standards which do not preclude development in conflict with SB9 or SB330.

**ORDINANCE NO. 2024-\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF  
LOS ALTOS ADDING CHAPTER 14.64 TO TITLE 14 ZONING OF  
THE LOS ALTOS MUNICIPAL CODE ENACTING  
REGULATIONS FOR DUAL OPPORTUNITY DEVELOPMENTS  
PURSUANT TO SENATE BILL 9 (SB9)**

**WHEREAS**, on September 16, 2021, the State of California enacted legislation known as Senate Bill 9 (“SB 9”), which added Sections 65852.21 and 66411.7 to the California Government Code, to require local public agencies, beginning January 1, 2022, to ministerially approve lot splits and the construction of two (2) primary dwelling units on single-family zoned lots meeting certain conditions; and

**WHEREAS**, the purpose of SB 9 is to address California’s affordable housing crisis by promoting small-scale neighborhood residential development to provide for increased housing opportunities; and

**WHEREAS**, SB 9 allows for streamlined ministerial approval for certain residential dwelling units and lot splits in single-family residential zones; and

**WHEREAS**, SB 9 requires the City to apply objective design standards to residential dwelling units approved pursuant to the legislation and prohibits discretionary design review for such units; and

**WHEREAS**, SB 9 allows cities to impose certain standards for projects approved under that legislation, which the City Council desires to adopt; and

**WHEREAS**, on January 24, 2023, the City Council approved the City’s Sixth Cycle Housing Element Update; and

**WHEREAS**, Program 1.M of the Housing Element Update requires the City of Los Altos to implement SB9; and

**WHEREAS**, the Planning Commission held a duly noticed public hearing on April 18, 2024 and provided a recommendation to the City Council; and

**WHEREAS**, the City Council held a duly noticed public hearing on \_\_\_\_\_, 2024; and

**WHEREAS**, this Ordinance is exempt from environmental review pursuant to Section 15061(b)(3) of the State Guidelines implementing the California Environmental Quality Act of 1970, as amended.

**NOW THEREFORE**, the City Council of the City of Los Altos does hereby ordain as follows:



**SECTION 1. AMENDMENT OF TITLE 14 OF THE MUNICIPAL CODE:** Chapter 14.64 is hereby added to the Los Altos Municipal Code as set forth in Appendix A to this Ordinance, underline indicates additions.

**SECTION 2. CONSTITUTIONALITY; AMBIGUITIES.** If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions hereof. Any ambiguities in the Los Altos Municipal Code created by this Ordinance shall be resolved by the Development Services Director, in their reasonable discretion, after consulting the City Attorney.

**SECTION 3. PUBLICATION.** This ordinance shall be published as provided in Government Code section 36933.

**SECTION 4. EFFECTIVE DATE.** This ordinance shall be effective upon the commencement of the thirty-first day following the adoption date.

The foregoing ordinance was duly and properly introduced at a regular meeting of the City Council of the City of Los Altos held on \_\_\_\_\_, 2024 and was thereafter, at a regular meeting held on \_\_\_\_\_, 2024 passed and adopted by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
Jonathan D. Weinberg, MAYOR

Attest:

\_\_\_\_\_  
Melissa Thurman, MMC, CITY CLERK

**APPENDIX A**  
**AMENDMENTS TO CHAPTER 14.64**

## **Chapter 14.64 – DUAL OPPORTUNITY DEVELOPMENT (SB9)**

### **14.64.010 - Purpose**

Senate Bill (SB) 9 requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 enables the creation of up to four housing units in the lot area typically used for one single-family home. This chapter allows residential housing developments to implement Government Code Section 65852.21 for developing two (2) primary residential units on single-family (R1) zoned lots and Section 66411.7 for urban lot splits.

### **14.64.020 - Eligibility**

A proposed housing development or urban lot split shall comply with the following eligibility requirements:

- A. Property is zoned R1 (Single-Family Residential). Lots located in multi-family residential, commercial, mixed-use zones, etc. are not subject to these regulations even if single-family residential uses are a permitted use.
- B. Property is not located in a historic district, listed on the State Historic Resources Inventory, or designated a city landmark or historic resource.
- C. Shall not result in the demolition or structural modification of any portion of an existing residential unit that:
  1. Is protected by a recorded covenant, ordinance or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income.
  2. Housing that is subject to any form of rent or price control.
  3. Has been occupied by a tenant within the three (3) years prior to the submittal of an application to the city.
- D. Property does not contain a dwelling unit that was withdrawn from rental or lease under the Ellis Act at any time within fifteen (15) years before the date of application to the city.
- E. The lot to be subdivided shall not be a lot that was established through a prior urban lot split.
- F. The lot to be subdivided shall not abut any lot that was previously subdivided through an urban lot split by the owner of the lot proposed to be subdivided or any party acting in concert with the owner. For the purpose of this section, any party acting in concert with the owner shall include any individual with a familial relation to the property owner (including, but not limited to, parents, children, siblings and spouses) or any business entity in which the property owner has more than ten (10) percent ownership.
- G. Property does not contain any of the site conditions listed in Government Code Section 65913.4, subdivision (a)(6)(B-K), as may be amended from time to time, summarized as follows:
  1. Prime farmland, farmland of statewide importance or land that is zoned or designated for agricultural protection or preservation by the voters.

2. A wetland.
3. Within a very high fire hazard severity zone, unless the site complies with all fire-hazard mitigation measures required by existing building standards.
4. A hazardous waste site that has not been cleared for residential use.
5. Within a delineated earthquake fault zone, unless all development on the site complies with applicable seismic protection building code standards.
6. Within a one hundred (100) year flood hazard area, unless the site has either been subject to a letter of map revision prepared by the Federal Emergency Management Agency and issued to the local jurisdiction or meets Federal Emergency Management Agency requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program.
7. Within a regulatory floodway, unless all development on the site has received a no-rise certification.
8. Land identified for conservation in an adopted natural community conservation plan, habitat conservation plan or other adopted natural resource protection plan.
9. Habitat for protected species.
10. Land under conservation easement.

#### **14.64.030 - Number of Lots and Minimum Site Area**

An existing lot shall not be subdivided into more than two lots. The smallest subdivided lot shall not be less than 40 percent of the original lot size, and both newly subdivided lots shall not be smaller than 1,200 square feet.

#### **14.64.040- Lot Frontage Width and Design**

Each lot shall adjoin a public or private street with a minimum frontage of 20 feet in width. The layout of proposed lots shall be designed to minimize site disturbance in terms of cut and fill and the removal of trees. Lot lines shall be organized to be parallel and perpendicular to the street on straight streets and approximately radial on curved streets, to the extent possible.

#### **14.64.050 - Owner Occupancy**

Upon submittal of an application for an urban lot split, the property owner shall sign an affidavit stating they intend to occupy one of the units as their primary residence for at least three years, unless the owner is a community land trust, as defined in clause (ii) of subparagraph (C) of paragraph (11) of subdivision (a) of Section 402.1 of the Revenue and Taxation Code, or is a qualified nonprofit corporation as described in Section 214.15 of the Revenue and Taxation Code.

#### **14.64.060 - Map Act Compliance**

The urban lot split shall conform to all applicable objective requirements of the Subdivision Map Act (Gov. Code § 66410, et. seq.), including implementing requirements in this chapter.

#### **14.64.070 - Rental Term**

No unit created pursuant to this chapter may be rented for a period less than 30 days.

#### **14.64.080 - Maximum Number of Units**

- A. No more than two (2) primary dwelling units are permitted on a single existing lot or newly created lot through an urban lot split.
- B. For existing lots not established through an urban lot split, in addition to a primary dwelling unit(s) an accessory dwelling unit(s) and/or a junior accessory dwelling unit(s) may also be allowed for a maximum of four (4) total units (inclusive of primary units, accessory dwelling units and junior accessory dwelling units).
- C. For lots established through an urban lot split, in addition to a primary dwelling unit, a second primary unit or an accessory dwelling unit or junior accessory dwelling unit may also be allowed for a maximum of two (2) units per resulting lot (inclusive of primary units, accessory dwelling units and junior accessory dwelling units).

**14.64.090 - Objective Development Standards**

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| <u>Coverage</u>                        | <u>One-story structures with a maximum height of 20 feet shall have a maximum lot coverage of 35 percent of the total site area. One-story structures exceeding 20 feet in height or two-story structures shall have a maximum lot coverage of 30 percent of the total site area.</u>   |
| <u>Floor Area Ratio</u>                | <u>Lots not exceeding 11,000 square feet shall have a maximum floor area of 35 percent. For lots exceeding 11,000 square feet, the maximum floor area shall be 3,850 square feet plus 10 percent times the net lot area minus 11,000 square feet.</u>   |
| <u>Setbacks</u>                        | <u>Front: 25 feet for the first story; and 30 feet for the second story</u>   |
|  | <u>Side: 4 feet</u>   |
|  | <u>Rear: 4 feet</u>   |
| <u>Height</u>                          | <u>Maximum building height is two stories and 27 feet. Flag lots shall be limited to one story and 20 feet in height.</u>   |
|  | <u>Maximum first floor plate height: 10 feet</u>  |
|  | <u>Maximum second floor plate height: 9 feet</u>  |
|  | <u>Maximum entry porch plate height: 12 feet</u>  |
| <u>Basements</u>                       | <u>Basements shall not extend beyond the floor area of the first floor.</u>   |
|  | <u>Light wells, ingress and egress wells, patio wells, and other similar elements shall not be permitted within a required setback.</u>   |
|  | <u>Light wells, ingress and egress wells, patio wells, and other similar elements shall utilize vertical retaining walls. Contour graded slopes, which expose the basement as a story, are prohibited.</u>  |
|  | <u>Light wells, ingress and egress wells, patio wells, and other similar elements shall be at least 75 percent open in area to light and air above.</u>   |
| <u>Second Story Decks or Balconies</u> | <u>Second-story decks and balconies are allowed only on the front elevation facing a public or private street and shall meet the second story setbacks. The maximum size of any one deck or balcony shall be 25 square feet and have a maximum depth of four feet. A deck on the roof of a two-story structure is prohibited.</u> |
| <u>Landscaping</u>                     | <u>A minimum of 50 percent of the required front yard setback area shall be landscaping.</u>  |
| <u>Parking</u>                         | <u>A minimum of one covered space per unit within a garage or carport with a minimum interior dimension of nine feet in width by 18 feet in length. Parking for</u>   |

|   |   |
|---|---|
|   | <u>accessory dwelling units shall be provided separately as required under Chapter 14.14.</u>   |
| <u>Fences</u>   | <u>Fences shall be subject to the zoning standards of the underlying zoning district.</u>   |
| <u>Outdoor Kitchen, Barbeques, Fireplaces, and Swimming Pools</u> | <u>Outdoor kitchen, barbeques, fireplaces, and swimming pools shall be subject to the zoning standards of the underlying zoning district.</u> |
| <u>Accessory Structures</u>                                       | <u>Accessory structures shall be subject to the zoning standards of the underlying zoning district.</u>                                       |
| <u>Signs</u>  | <u>Signs shall be subject to the zoning standards of the underlying zoning district.</u>  |

1. All development standards shall be modified as necessary if they preclude two single-family units with a minimum size of 800 square feet and four-foot side and rear yard setbacks.
2. Development of an ADU shall be subject to the separate development standards and requirements pursuant to Chapter 14.14.
3. No architectural features (i.e. cantilevers, bay windows, and/or other architectural projection) shall be allowed within the required side and rear setbacks except for 12-inch maximum eaves with four-inch maximum gutters.
4. No parking is required if the property is located within one half mile walking distance of either a high-quality transit corridor or major transit stop; or a car share vehicle program is located within one block of the property.

#### **14.64.100 - Objective Design Standards**

##### **A. Site and Building Design**

1. Attached garages shall be recessed a minimum of one foot from the front elevation wall plane of the residence.
2. When a three-car attached garage is proposed, visual impact shall be reduced by, (i) using a tandem parking layout inside a two-car-wide garage; (ii) using three single-car-wide garage doors instead of a double and a single garage door; or (iii) setting back one of the doors from the others.
3. Each property is prohibited from more than one curb cut or driveway accessing a street unless the subject site is fronting a city's arterial or collector street.
4. A curb cut or driveway width connecting to a public or private street shall be no greater than 20 feet in width.
5. No more than two types of roof forms and two roof pitches shall be used.
6. Building entrances shall be oriented towards the street.
7. Facade articulation shall be provided with at least six corners on the first floor.
8. Building entrances shall have a roofed projection (such as a porch) or recess with a minimum depth of at least five feet and a minimum horizontal area of thirty (30) square feet. Any corners within the building entrances shall not count as part of the corners as required above.
9. Windows and doors shall either be trimmed or recessed. When trimmed, the trim material shall not be less than 3.5" in width by 1" in depth when protruding from the wall. When recessed, the building primary siding material shall cover the recessed edge faces and wrap toward the interior face of the window glazing or door face by not less than 2 inches in depth.
10. On elevations that are facing interior side property lines, a minimum sill height of 5' is required for all second-floor windows.

11. Provide an inset/offset or plane change on long walls of greater than 25 feet in length.
12. First floor finished elevation shall be no more than twenty-two (22) inches above existing natural grade on a non-hillside lot.
13. For a hillside property, a stepped foundation is required where the average slope beneath the proposed structure is 10% or greater.
14. No exterior staircases above grade shall be allowed.
15. Except for pathway lighting, outdoor lighting fixtures shall be downward facing and fully shielded or recessed.

B. Construction Materials and Colors

1. Foam trim with a painted stucco finish is prohibited.
2. Mixing roof materials and colors are not allowed except for curved dormers and shed roof structures.
3. Exterior finish including wainscoting used for one structure shall be no greater than three different materials. Each material may be a different color, but every part of exterior finish comprised of a single material shall be a single color.
4. Architectural detailing shall be incorporated such as window and door trim, belly bands, cornices, shutters, column accents to the entry porch, and railings in an integrated composition.

C. Landscaping and Screening Vegetation

1. For lots five thousand (5,000) square feet in size or greater, a minimum of two medium to large canopy size trees shall be planted with at least one tree planted in the front yard. For each additional five thousand (5,000) square-foot lot size, an additional medium to large canopy size tree shall be planted onsite.
2. For lots with less than five thousand (5,000) square feet in size, a minimum of one, medium to large canopy size tree shall be planted onsite.
3. Screening vegetation shall be required within lines of sight from each jamb of any second-floor windows with a sill height of less than 5' to the side or rear property lines and within lines of sight to any side property line for any proposed second story deck or balcony.
4. Any required screening vegetation shall be evergreen species reaching at least fifteen feet through twenty feet in height at maturity with permanent irrigation.
5. All projects shall comply with the City's Water Efficiency Landscape Ordinance (WELO).

**14.64.110 - Nonconforming Conditions**

Corrections of nonconforming zoning conditions shall not be required for the ministerial approval of a housing development or urban lot split.

There shall be no required setbacks for an existing structure or for a structure constructed in the same location and to the same dimensions as an existing structure (i.e., a building reconstructed on the same footprint), subject to compliance with all applicable building and fire codes.



#### **14.64.120 - Administration**

Applications for a housing development or parcel map for an urban lot split pursuant to this chapter shall be processed ministerially without discretionary review, processes, or provisions. Review and submittal of an application for a housing development and/or parcel map for an urban lot split shall require submittal of all items listed on the City's application submittal checklist.

The city may deny an application for a housing development or parcel map for an urban lot split if the building official makes a written finding, based on a preponderance of the evidence, that the project would have a "specific, adverse impact" on either public health and safety or on the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact.

SB 9 allows for ministerial approval of certain "new" residential dwelling units. The term "new unit" as used in SB 9 shall be construed to mean any of the following:

- A. A new residential dwelling unit (other than an accessory dwelling unit) proposed to be constructed on a vacant lot.
- B. A new residential dwelling unit (other than an accessory dwelling unit) is constructed in place of a demolished residential dwelling unit.
- C. A residential dwelling unit (other than an accessory dwelling unit) is reconstructed to the substantial equivalence of new.

As used above, a residential dwelling unit is reconstructed to the "substantial equivalence of new" if any of the following sets of criteria apply:

- A. The residential dwelling unit is stripped to the studs and/or foundation and reconstructed.
- B. A substantial remodel is proposed in connection with a substantial addition so that the home will have the appearance of a new home and a remaining physical and economic life comparable to that of a new home. These criteria shall be deemed to be met if all the following apply:
  - 1. An addition is proposed to an existing residential dwelling unit equal to or greater in size than 50% of the floor area of the existing residential dwelling unit (excluding garages, accessory dwelling units, other accessory structures, crawl spaces, unfinished attics, and basement floor areas).
  - 2. At least 25% (or more, if necessary to bring the structure into compliance with applicable building codes) of the existing roof will be demolished, repaired, or replaced, and the entire roof covering will be replaced.
  - 3. At least 25% (or more, if necessary to bring the structure into compliance with applicable building codes) of the existing facade will be demolished, repaired, or replaced, the entire facade will be repainted or otherwise resurfaced, and the entire facade for the residential dwelling unit in its completed condition is designed to match.

4. All existing floor coverings and plumbing fixtures will be removed and, as applicable, replaced.
5. Sprinklers will be installed if not already provided.
6. At least 25% (or more, if necessary to bring the structure into compliance with applicable building codes) of existing drywall or other wall coverings will be demolished, repaired, or replaced, and all retained wall covering will be repainted or otherwise resurfaced.
7. All exterior doors and windows will be replaced.

Applications to remodel and/or build single-family residences not subject to this chapter in their entirety shall continue to be subject to the requirements of the underlying zoning district and Chapter 14.76. Future additions or modifications to “new units” that were built under this chapter pursuant to SB9 shall utilize the standards and process pursuant to this chapter.

## RESOLUTION NO. 2021-57

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ALTOS ESTABLISHING OBJECTIVE STANDARDS FOR SINGLE FAMILY RESIDENCES TO IMPLEMENT SENATE BILL 9

**WHEREAS**, on September 16, 2021, the Governor signed Senate Bill 9 (Stats. 2021, Ch. 162) (“SB 9”); and

**WHEREAS**, SB 9 allows for streamlined ministerial approval for certain residential dwelling units in single-family residential zones; and

**WHEREAS**, SB 9 requires the City to apply objective design standards to residential dwelling units approved pursuant to the legislation and prohibits discretionary design review for such units; and

**WHEREAS**, the City of Los Altos has adopted Single-Family Residential Design Guidelines (the “SFRDG”) pursuant to Section 14.76.020 of the Los Altos Municipal Code; and

**WHEREAS**, to implement SB 9, it is necessary or convenient that the City Council amend the SFRDG to specify objective design criteria applicable to new single-family homes; and

**WHEREAS**, SB 9 allows cities to impose certain standards for projects approved under that legislation, which the City Council desires to adopt; and

**WHEREAS**, certain ambiguities in SB 9 require resolution pending guidance from the judiciary and the Department of Housing and Community Development.

**NOW THEREFORE, BE IT RESOLVED**, by the City Council of the City of Los Altos, as follows:

1. Effective January 1, 2022, the SFRDG are hereby amended to include as APPENDIX D-1 thereof the objective single-family design guidelines (the “Objective Standards”) attached to this Resolution as **Appendix 1**. After January 1, 2022, applications to remodel existing single-family residences and applications to construct new single-family residences not subject to approval under SB 9 shall continue to be subject to the SFRDG. Applications to construct new dwelling units subject to approval under SB 9 shall comply with the Objective Standards. Applicants for projects subject to approval under SB 9 are strongly encouraged to comply with all provisions of the SFRDG to ensure high quality design and neighborhood compatibility.
2. Nothing in this Resolution or its appendices is intended to preclude the application to SB 9 projects of: building codes, state and local rules with respect to accessory

dwelling units and junior accessory dwelling units, or other laws generally applicable to housing development projects of one to four units.

3. As soon as practicable, Staff is directed to hold one or more study sessions with the Planning Commission and with the Design Review Commission to obtain feedback concerning the Objective Standards from both commissions and from the public. Relying on such feedback and the experience of Staff in implementing SB 9, Staff is hereby directed to return to the City Council no later than May 2022 to report on the implementation of SB 9 and to recommend any amendments to the Objective Standards.
4. SB 9 authorizes local agencies to impose certain standards and requirements outlined in **Appendix 2** to this Resolution. Those standards and requirements are hereby adopted, and the SFRDG is hereby amended to incorporate the standards as APPENDIX D-2 thereof.
5. SB 9 contains certain ambiguities that require interpretation. Pending further guidance from the Department of Housing and Community Development and the judiciary, Staff are hereby directed to follow the guidance included in the interpretive guidance document attached as **Appendix 3** to this Resolution. If guidance from HCD or the judiciary conflicts with anything in **Appendix 3**, then that guidance shall control.
6. The City Council hereby finds that the adoption of this Resolution is exempt from review under the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15061(b)(3) (Common Sense Exemption) and 15308 (Actions by Regulatory Agencies for the Protection of the Environment), in that the regulations hereby imposed are intended to preserve scenic quality for the City of Los Altos by establishing design guidelines to protect the existing community character, and because it can be seen with certainty that the adoption of the regulations hereby imposed will not have a significant effect on the environment (or that any such effect is wholly speculative), and none of the circumstances in CEQA Guidelines Section 15300.2 applies.
7. In adopting this Resolution, the City Council intends that it be construed to be consistent with the state and federal constitutions and with applicable state housing laws, including SB 9. If any section, sentence, clause, or phrase of this Resolution (including its appendices), is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions hereof.
8. Any person wishing to challenge the validity of any provision of this Resolution (including its appendices), whether facially or as applied, shall, if aggrieved by such provision, appeal to the City Council pursuant to Chapter 1.12 of the Los Altos Municipal Code. As used herein, a person is “aggrieved” if, (a) a provision of this Resolution would prevent the individual from seeking approval of a housing development project for which the individual would like to apply, and (b) in the opinion of the individual, the challenged provision is invalid or unconstitutional. If the City

Council grants an appeal a facial challenge, then it shall direct staff to propose appropriate amendments to this Resolution, consistent with the City Council's decision on the appeal. If the City Council grants an as-applied challenge, then it may allow an exception to standards to the limited extent necessary to avoid the invalidity or unconstitutionality.

**I HEREBY CERTIFY** that the foregoing is a true and correct copy of a Resolution passed and adopted by the City Council of the City of Los Altos at a meeting thereof on the 14<sup>th</sup> day of December, 2021 by the following vote:

AYES: Council Members Fligor, Lee Eng, Weinberg, Vice Mayor Meadows and Mayor Enander  
NOES: None  
ABSENT: None  
ABSTAIN: None



Anita Enander, MAYOR

Attest:



Andrea Chelemengos, MMC, CITY CLERK

**APPENDIX 1**  
**OBJECTIVE STANDARDS ADOPTED AS**  
**APPENDIX D-1 TO THE SFRDG**

**Objective Standards for Single-Family Residential Zone**

It is intent that the following standards shall not be applied to preclude a housing development project allowed under SB 9. As used here, a residential dwelling unit includes living space only and not parking or accessory structures.

**1. Definition – any term not defined in this section has the meaning given in the City Municipal Code unless otherwise specified.**

“Secondary front lot line” means a lot line abutting a street which is not a front lot line.

“Plate height” means the vertical distance measured from the top of the finished floor to the top of the plates.

“Exterior finish” refers to the exterior façade of a house, excluding the roofs, trim, windows, doors, and shutters.

“Exterior trim” refers to the finish materials on the exterior of a building, such as moldings applied around openings (window trim, door trim), siding, windows, exterior doors, attic vents, and crawl space vents.

“Lines of sight” means with a 60-degree angle beginning at the starting point, 30 degrees to the left and 30 degrees to the right in horizontal perspective.

“High-quality transit corridor” means corridor with fixed route bus service with service intervals no longer than fifteen minutes during the morning and afternoon peak commute hours.

“Major transit stop” means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

**2. SB 9 – Development Standards**

**A. Lot Split and Minimum Site Area.**

An existing parcel shall not be subdivided into more than two parcels. The smallest subdivided parcel shall not be less than forty percent (40%) of the original parcel, and both newly subdivided parcels each shall be no smaller than one thousand two hundred (1,200) square feet.

**B. All development standards under Government Code Section 66411.7 are hereby adopted.**

**C. Site Frontage and Site Width.**

- a. The minimum width of the access corridor for each flag lot shall be twenty (20) feet, and shall provide direct access to a public or private street.
- b. Easements for the provision of public services and facilities and egress and ingress are required.

**D. Coverage.** The following coverage standards apply unless two single-family units with four-foot rear and side-yard setbacks and 800 square feet each in floor area are precluded.

- a. The maximum coverage for all structures in excess of six feet in height shall be thirty-five (35) percent of the total area of the site where the height of one-story development does not exceed twenty (20) feet.
- b. A minimum of fifty (50) percent of the required front yard area shall be a combination of pervious landscape material and landscaping.
- c. On sites where the lot coverage exceeds thirty (30) percent, two-story structures shall not be allowed.

**E. Floor Area Ratio.** The following coverage standards apply unless two single-family units with four-foot rear and side-yard setbacks and 800 square feet each in floor area are precluded.

- a. For lots with a net site area not exceeding eleven thousand (11,000) square feet, the maximum floor area shall be thirty-five (35) percent of the net site area.
- b. For lots with a net site area exceeding eleven thousand (11,000) square feet, the maximum floor area shall be three thousand eight hundred fifty (3,850) square feet plus ten (10) percent times the net site area minus eleven thousand (11,000) square feet.

**F. Setbacks.**

- a. Except as noted below, the minimum setbacks shall be as follows:

|                         |         |
|-------------------------|---------|
| <b>Front*</b>           |         |
| <b>First Story</b>      | 25 feet |
| <b>Second Story</b>     | 30 feet |
| <b>Secondary Front*</b> |         |
| <b>First Story</b>      | 10 feet |
| <b>Second Story</b>     | 13 feet |

|                      |   |
|----------------------|---|
| <b>Side</b>          |   |
| <b>First Story</b>   | No less than 4 feet. However, to reduce the privacy impacts to abutting property owners, applicants are encouraged to voluntarily increase the setbacks to be at least 10 feet from the side property lines.                  |
| <b>Second Story*</b> | No less than 11.5 feet. However, to reduce the privacy impacts to abutting property owners, applicants are encouraged to voluntarily increase the second story setback to be at least 17.5 feet from the side property lines. |
| <b>Rear</b>          | No less than 4 feet. However, to reduce the privacy impacts to abutting property owners, applicants are encouraged to voluntarily increase the rear setback to be at least 10 feet from the rear property line.               |

- b. No architectural features (i.e. cantilevers, bay windows, and/or any other architectural projections) shall be allowed within the side and rear required setback areas except for 12-inch maximum eaves with four-inch maximum gutters.
- c. Notwithstanding these rules, the applicant shall be allowed to construct within the dimensions of an existing legal building.

\*Unless two single-family units with four-foot rear- and side-yard setbacks and 800 square are precluded.

**G. Height of Structures.**

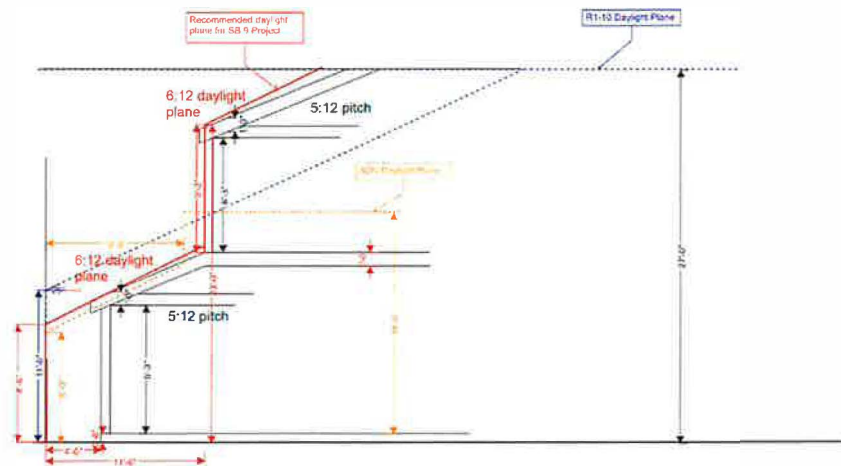
No structure shall exceed two stories or twenty-seven (27) feet in height from the natural grade. On flag lots the height of structures shall be limited to one story and twenty (20) feet in height. Basements shall not be considered a story. When the lot coverage exceeds or is proposed to exceed thirty (30) percent, the maximum height of structures shall be twenty (20) feet.

**H. Daylight Plane.**

- a. No portion of any residential units shall extend above or beyond a daylight plane unless two single-family units with four-foot rear- and side-yard setbacks and 800 square feet each in floor area are precluded.



- b. The daylight plane starts at a height of eight feet and six inches (8'-6") at the property line and proceeds inward at 6:12 slope. At eleven feet and six inches from the property line, the daylight plane increases to twenty-three feet (23') and proceeds inward at 6:12 slope. All appurtenances, including chimneys, vents and antennas, shall be within the daylight plane. The daylight plane is not applied to a side or rear property line when it abuts a public alley or public street. However, the daylight plane shall not be enforced if it prohibits two single-family units with 4-foot rear and side-yard setbacks and 800 square feet each in floor area. Notwithstanding this requirement, the maximum required rear and side yard setback shall be no less than four feet.



The daylight plane starts at a height of eight feet and six inches (8'-6") at the property line and proceeds inward at 6:12 slope. At eleven feet and six inches from the property line, the daylight plane increase to twenty three feet (23') and proceeds inward at 6:12 slope. All appurtenances, including chimneys, vents and antennas, shall be within the daylight plane. The daylight plane is not applied to a side or rear property line when it abuts a public alley or public street. However, the daylight plane shall not be enforced if it prohibits two single-family units with 4-foot rear and side-yard setbacks and 800 square feet each in floor area.

## I. Basements.

Basements shall be regulated as follows:

- a. Basements shall not extend beyond the floor area of the first floor of the main or accessory structure above;
- b. Light wells, ingress and egress wells, patio wells, and other similar elements shall not be permitted within a required setback yards.
- c. Light wells, ingress and egress wells, patio wells, and other similar elements shall utilize vertical retaining walls. Contour graded slopes, which expose the basement as a story, are prohibited.
- d. Light wells, ingress and egress wells, patio wells, and other similar elements shall be at least seventy-five (75) percent open in area to light and air above.

**J. Outdoor Kitchen, Barbeques, Fireplaces, and Swimming Pools.**

Outdoor kitchen barbeques, fireplaces, and swimming pools shall be subject to zoning standards of the underlying zoning district.

**K. Parking.**

- a. One covered parking space for each unit with minimum dimensions of nine (9) feet in width and eighteen (18) feet in depth is required. Uncovered parking shall be allowed only to the extent necessary to facilitate the construction of two units that each is 800 square feet in size.
- b. No parking is required in either of the following instances:
  - 1) The subject parcel is located within one-half mile walking distance of either a high-quality transit corridor or a major transit stop.
  - 2) A car share vehicle program is located within one block of the parcel.

**L. Signs.**

Signs shall be subject to zoning standards of the underlying zoning district.

**M. Fences.**

Fences shall be subject to zoning standards of the underlying zoning district.

**N. Nonconforming Use Regulations.**

Corrections on nonconforming zoning conditions shall not be required for the ministerial approval of a parcel map application for the creation of a lot split pursuant to SB 9.

**O. Accessory Structures.**

Accessory structures shall be subject to zoning standards of the underlying zoning district.

**3. SB 9 – Objective Design Standards**

**A. Plate Heights.**

- a. Plate height is limited to 9'-3" for the first floor except that an entry porch may have a maximum plate height of 12' and a garage may have a maximum plate height of 10'.
- b. Plate height is limited to 8'-3" for the second floor.

**B. Second Floor Windows.**

Second floor windows shall be regulated as follows:

- a. On elevations that are facing interior side property lines, a minimum sill height of 4'-6" is required for all second-floor windows.

- b. On elevations that are facing rear property lines adjacent to a neighboring property, a minimum sill height of the California Building Code (CBC) minimum required sill height for egress or light and ventilation shall be provided.
- c. For any windows within ten feet of rear or interior side property lines adjacent to a neighboring property, the maximum second story window size shall be no larger than the CBC minimum required size.

**C. Balcony and Rooftop Deck.**

Balconies and rooftop decks shall be regulated as follows:

- a. Balconies and/or roof decks are prohibited when facing interior side yards and rear yard adjacent to a neighboring property.
- b. A balcony or a roof deck is allowed only on front elevations facing public and private streets; and a minimum of twenty-five (25) feet side setback shall be provided from the side property lines to the edge of the balcony or roof deck.
- c. The maximum depth for any balconies and rooftop decks shall be four (4) feet.
- d. The maximum size for any balconies and rooftop decks shall be 25 square feet.
- e. Screening devices shall include solid railing walls instead of open railings, and latticework above the required railing height to obscure sight lines from a balcony or a roof deck.

**D. Screening Vegetation.**

Screening vegetation shall be regulated as follows:

- a. Screening vegetation is required in either of the following situations:
  - 1) Within lines of sight for any proposed balcony and roof deck projected to any side property line, screening vegetation shall be planted.
  - 2) Within lines of sight from each jamb of any windows with a sill height of less than 4'-6" at second floor, screening vegetations shall be planted.
- b. Any required screening vegetation shall be evergreen species reaching to at least fifteen feet through twenty feet in height at their mature age with permanent irrigation and shall be maintained for the life of the project.
- c. At least twenty-four-inch (24-inch) box screening vegetation shall be planted prior to occupancy of the residence.

## **E. Landscaping.**

Onsite landscaping shall be regulated as follows:

- a. Trees selected from the [Street Tree Planting List](#) are required to be planted on site following the standards below:
  - 1) For lots five thousand (5,000) square feet in size or greater, at least two, Category II trees shall be planted with at least one, Category II tree planted in the front yard. For each additional five thousand (5,000) square-foot lot size, one more Category II tree shall be planted onsite.
  - 2) For lots with less than five thousand (5,000) square feet in size, at least one, Category II tree or two Category III trees shall be planted onsite.
  - 3) If there are existing trees onsite, an arborist report, prepared by an ISA certified arborist, may be required to determine the equivalent value of existing trees compared to the Street Tree Planting List.
- b. Water Efficiency Landscape Ordinance (WELO) and its submittal requirements apply to the following projects:
  - 1) New construction projects with new or rebuilt landscape areas that exceed five hundred (500) square feet.
  - 2) Remodels and/or additions to existing single-family houses with new or rebuilt landscape areas that exceed two thousand five hundred (2,500) square feet.

## **F. Construction Materials and Colors.**

All construction materials shall be long-term (30 years) durability and appearance, as per manufacture's specifications. Specifically, the construction materials shall be subject to the following:

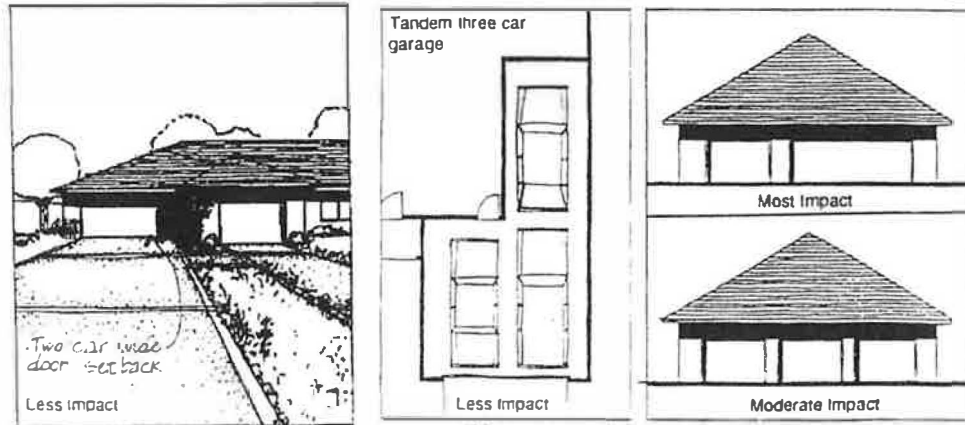
- a. Foam trim with a painted stucco finish is prohibited throughout the structure(s).
- b. Mixing roof materials and colors are not allowed except for curved dormers and shed roof structures.
- c. Exterior finish including wainscoting used for one structure shall be no greater than three different materials. Each material may be a different color, but every part of exterior finish comprised of a single material shall be a single color.
- d. Window and door trims shall be limited to one material and one color. The material and color shall be the same for both windows and door trims.

- e. Architectural detailing shall be incorporated such as window and door trim, belly bands, cornices, shutters, column accents to the entry porch, and railings in an integrated composition.

**G. Site and Building Design.**

The site and building design shall be subject to the following standards to create visual variety and avoid a large-scale appearance:

- a. Driveway shall be designed per the following standards:
  - 1) Each property is prohibited from more than one curb cut or driveway accessing a street unless the subject site is fronting a City's Arterial or Collector road.
  - 2) A curb cut or driveway width connecting to a public or private street shall be no greater than twenty-two (22) feet.
  - 3) For corner lots, driveway connections shall be at least thirty (30) feet from the intersecting corner property lines at the street intersection.
  - 4) If the project impacts a street shoulder, then it shall be improved accordingly per City's Street Shoulder Improvement Policy.
- b. Façade articulation shall be provided with at least six corners on the first floor.
- c. Building entrances shall have a roofed projection (such as a porch) or recess with a minimum depth of at least five feet and a minimum horizontal area of thirty (30) square feet. Any corners within the building entrances shall not count as part of the corners as required above.
- d. Downspout shall be painted to match or accent the exterior finish color.
- e. Attached garage shall be subject to the following standards:
  - 1) Attached garage shall be recessed at least one foot from the front elevation wall plane of the residence.
  - 2) When a three-car attached garage is proposed, visual impact shall be reduced by, (i) using a tandem parking layout inside a two-car-wide garage; (ii) using three single-car-wide garage doors instead of a double and a single garage door; or (iii) setting back one of the doors from the others.



- f. Windows and doors shall either be trimmed or recessed.
- 1) When trimmed, the trim material shall not be less than 3.5" in width by  $\frac{3}{4}$ " in depth when protruding from the wall.
  - 2) When recessed, the building primary siding material shall cover the recessed edge faces and wrap toward the interior face of the window glazing or door face by not less than 2 inches in depth.
- g. The design of roof shall be regulated as follows:
- 1) No more than two types of roof forms shall be used.
  - 2) No more than two roof pitches shall be used.
- h. First floor finished elevation shall be no more than twenty-two (22) inches above existing natural grade on a non-hillside lot. In a flood zone or flood way, the first-floor level may be set at the minimum allowed above grade to meet code requirements.
- i. For a hillside property, a stepped foundation is required where the average slope beneath the proposed structure is 10% or greater.
- j. No permanent noise generating mechanical equipment shall be located in any required side and rear yards. The placement and operation of any such equipment must be consistent with the City's Noise Ordinance.
- k. No exterior staircases above grade shall be allowed.
1. Except for pathway lighting, outdoor lighting fixtures shall be downward facing and fully shielded or recessed.
- m. All new utility services and relocated existing utility services are placed underground pursuant to Chapter 12.68 of Municipal Code.

**APPENDIX 2**  
**STANDARDS ADOPTED PURSUANT TO SB 9 AS**  
**APPENDIX D-2 TO THE SFRDG**

1) **Objective Zoning/Subdivision/Design Standards.** SB 9 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 SB 9 or preclude the construction of two 800 square foot minimum primary dwelling units. Accordingly, all such existing objective City standards shall apply to SB 9 projects, in addition to any additional objective standards that the City may adopt.

2) **Maximum Units and Lots.** The City shall not approve more residential dwelling units or lots for any SB 9 project than required under state law, as set forth in Appendix 3 of City Council Resolution No. 2021-57.

3) **Parking.** SB 9 allows the City to choose to require parking consistent with the terms thereof. Accordingly, the City shall require off-street parking of one space per unit, unless the lot 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 unless there is a car share vehicle located within one block of the parcel.

4) **Setbacks.** SB 9 allows the City to choose to require setbacks consistent with the terms thereof. Accordingly, the City shall require setbacks of not less than four feet from the side and rear lot lines in all SB 9 projects, except as otherwise specified in SB 9.

5) **Applicant Residency; Short-Term Rental.** SB 9 requires every applicant for a ministerial lot split to provide an affidavit confirming that the applicant intends to reside in one of the SB 9 units for three years. The City shall enforce this requirement. All units created under SB 9 shall be subject to the City's short-term rental ordinance, codified at Chapter 14.30 of the Los Altos Municipal Code.

6) **Impact/Development Fees.** Applicants for SB 9 projects shall pay all applicable development impact fees imposed by the City.

7) **Historic Properties.** An SB 9 project may not be located at a property included on the State Historic Resources Inventory, as defined in Section 5020.1 of the Public Resources Code, or at a site that is designated by the City as a historic landmark or listed in the City's historic resource inventory, pursuant to Los Altos Municipal Code Chapter 12.44.

8) **Unavoidable Adverse Impacts.** SB 9 authorizes the Building Official to deny a 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 Building Official shall assess every SB 9 application for such unavoidable adverse impacts and shall, in consultation with the City Attorney, deny a project if an unavoidable adverse impact is identified. The Building Official's determination shall be final. For greater clarity, a project would have a specific, adverse impact on the physical environment if it would have an unavoidable impact on historic resources, as defined in CEQA Guidelines Section 15064.5.



### APPENDIX 3 INTERPRETIVE GUIDANCE DOCUMENT

SB 9 applies in “single-family residential zones.” The term “single-family residential zone” as used in Government Code Sections 65852.21(a) and 66411.7(a)(3)(A) is not defined. Within the City of Los Altos, the term “single-family residential zone” shall be construed to mean an R1 zoning designation.

The City’s application checklist for single-family homes would require applicants to indicate in writing whether the application is being brought pursuant to SB 9.

SB 9 allows for ministerial approval of certain “new” residential dwelling units. The term “new unit” as used in Government Code Section 65852.21(i)(1) is not defined, but provisions of SB 9 appear to assume that a new residential dwelling unit could include a reconstructed residential dwelling unit. Therefore, the term “new unit,” as used in SB 9, shall be construed to mean any of the following:

- (1) A new residential dwelling unit (other than an accessory dwelling unit)<sup>1</sup> proposed to be constructed on previously vacant ground;
- (2) A new residential dwelling unit (other than an accessory dwelling unit) constructed in place of a demolished residential dwelling unit;<sup>2</sup>
- (3) A residential dwelling unit (other than an accessory dwelling unit) reconstructed to the substantial equivalence of new.

As used above, a residential dwelling unit is reconstructed to the “substantial equivalence of new” if any of the following three sets of criteria apply:

- (1) The residential dwelling unit is stripped to the studs and/or foundation and reconstructed;
- (2) A substantial remodel is proposed in connection with a substantial addition so that the home will have the appearance of a new home and a remaining physical and economic life comparable to that of a new home. These criteria shall be deemed to be met if all the following apply:
  - a. An addition is proposed to an existing residential dwelling unit equal to or greater in size than 50% of the floor area of the existing residential dwelling unit (excluding

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<sup>1</sup> Reference to accessory dwelling units here is not meant to exclude construction of such units as allowed under Government Code Sections 65852.2 and 65852.22. Rather, the intent here is merely to define the term “new unit” for purposes of Section 65852.21(i)(1).

<sup>2</sup> Nothing herein is intended to exempt an applicant from the requirements of Government Code Section 65852.21(a)(3)-(5).

- garages, accessory dwelling units, other accessory structures, crawl spaces, unfinished attics, and basement floor areas);
  - b. At least 25% (or more, if necessary to bring the structure into compliance with applicable building codes) of the existing roof will be demolished, repaired, or replaced, and the entire roof covering will be replaced;
  - c. At least 25% (or more, if necessary to bring the structure into compliance with applicable building codes) of the existing façade will be demolished, repaired, or replaced, the entire façade will be repainted or otherwise resurfaced, and the entire façade for the residential dwelling unit in its completed condition is designed to match;
  - d. All existing floor coverings and plumbing fixtures will be removed and, as applicable, replaced;
  - e. Sprinklers will be installed if not already provided;
  - f. At least 25% (or more, if necessary to bring the structure into compliance with applicable building codes) of existing drywall or other wall coverings will be demolished, repaired, or replaced, and all retained wall covering will be repainted or otherwise resurfaced; and
  - g. All exterior doors and windows will be replaced.
- (3) All the major systems of the home are repaired or replaced so that the home will have the appearance of a new home and a remaining physical and economic life comparable to that of a new home. These criteria shall be deemed to be met if all the following apply:
- a. All existing plumbing, electrical, and HVAC systems will be replaced or rehabilitated consistent with modern building standards to ensure an estimated remaining physical life of at least 50 years for plumbing and electrical systems and 20 years for HVAC systems; and
  - b. The circumstances described in Item Nos. 2(b) to 2(g) apply.

For greater clarity, a lot developed under SB 9 may contain no more than four total residential dwelling units. These shall be limited to the following:

- (1) On a lot that is not split pursuant to Government Code Section 66411.7 and for which an existing primary residential dwelling unit is retained: one existing primary residential dwelling unit, one new primary residential dwelling unit, one accessory dwelling unit, and one junior accessory dwelling unit, for four units in total.
- (2) On a lot that is not split pursuant to Government Code Section 66411.7 and for which an existing primary dwelling unit does not exist or is demolished or reconstructed: two new primary residential dwelling units, one accessory dwelling unit, and one junior accessory dwelling unit, for four units in total.
- (3) On a lot that is split pursuant to Government Code section 66411.7: not more than two existing primary and/or accessory residential dwelling units (including junior accessory

dwelling units) per newly created lot and not more than two new primary residential dwelling units per newly created lot, for an ultimate total of not more than two residential dwelling units per newly created lot and four residential dwelling units total. In lieu of two new primary residential dwelling units on each newly created lot, an applicant may propose one new primary residential dwelling unit together with either a new accessory dwelling unit or a new junior accessory dwelling unit, provided that the applicant submits a written statement with the application for the housing development project indicating the applicant's understanding that providing the accessory dwelling unit or junior accessory dwelling unit will prevent the applicant from constructing a second primary residential dwelling unit. It is the intent of this provision that not more than four units may be constructed per original lot.

California Department of Housing and Community Development

# **SB 9 Fact Sheet**

**On the Implementation of Senate Bill 9 (Chapter 162, Statutes of 2021)**



Housing Policy Development Division  
March 2022

*This Fact Sheet is for informational purposes only and is not intended to implement or interpret SB 9. HCD does not have authority to enforce SB 9, although violations of SB 9 may concurrently violate other housing laws where HCD does have enforcement authority, including but not limited to the laws addressed in this document. As local jurisdictions implement SB 9, including adopting local ordinances, it is important to keep these and other housing laws in mind. The Attorney General may also take independent action to enforce SB 9. For a full list of statutes over which HCD has enforcement authority, visit HCD's [Accountability and Enforcement webpage](#).*

## **Executive Summary of SB 9**

Senate Bill (SB) 9 (Chapter 162, Statutes of 2021) requires ministerial approval of a housing development with no more than two primary units in a single-family zone, the subdivision of a parcel in a single-family zone into two parcels, or both. SB 9 facilitates the creation of up to four housing units in the lot area typically used for one single-family home. SB 9 contains eligibility criteria addressing environmental site constraints (e.g., wetlands, wildfire risk, etc.), anti-displacement measures for renters and low-income households, and the protection of historic structures and districts. Key provisions of the law require a local agency to modify or eliminate objective development standards on a project-by-project basis if they would prevent an otherwise eligible lot from being split or prevent the construction of up to two units at least 800 square feet in size. For the purposes of this document, the terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an accessory dwelling unit (ADU) or junior ADU or otherwise defined.

## **Single-Family Residential Zones Only**

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7 subd. (a)(3)(A))

The parcel that will contain the proposed housing development or that will be subject to the lot split must be located in a single-family residential zone. Parcels located in multi-family residential, commercial, agricultural, mixed-use zones, etc., are not subject to SB 9 mandates even if they allow single-family residential uses as a permitted use. While some zones are readily identifiable as single-family residential zones (e.g., R-1 “Single-Family Residential”), others may not be so obvious. Some local agencies have multiple single-family zones with subtle distinctions between them relating to minimum lot sizes or allowable uses. In communities where there may be more than one single-family residential zone, the local agency should carefully review the zone district descriptions in the zoning code and the land use designation descriptions in the Land Use Element of the General Plan. This review will enable the local agency to identify zones whose primary purpose is single-family residential uses and which are therefore subject to SB 9. Considerations such as minimum lot sizes, natural features such as hillsides, or the permissibility of keeping horses should not factor into the determination.

## Residential Uses Only

(Reference: Gov. Code, §§ 65852.21, subd. (a))

SB 9 concerns only proposed housing developments containing no more than two residential units (i.e., one or two). The law does not otherwise change the allowable land uses in the local agency's single-family residential zone(s). For example, if the local agency's single-family zone(s) does not currently allow commercial uses such as hotels or restaurants, SB 9 would not allow such uses.

## Ministerial Review

(Reference: Gov. Code, §§ 65852.21, subd. (a); 66411.7, subds. (a), (b)(1))

An application made under SB 9 must be considered ministerially, without discretionary review or a hearing. Ministerial review means a process for development approval involving no personal judgment by the public official as to the wisdom of carrying out the project. The public official merely ensures that the proposed development meets all the applicable objective standards for the proposed action but uses no special discretion or judgment in reaching a decision. A ministerial review is nearly always a "staff-level review." This means that a staff person at the local agency reviews the application, often using a checklist, and compares the application materials (e.g., site plan, project description, etc.) with the objective development standards, objective subdivision standards, and objective design standards.

## Objective Standards

(Reference: Gov. Code, §§ 65852.21, subd. (b); 66411.7, subd. (c))

The local agency may apply objective development standards (e.g., front setbacks and heights), objective subdivision standards (e.g., minimum lot depths), and objective design standards (e.g., roof pitch, eave projections, façade materials, etc.) as long as they would not physically preclude either of the following:

**Up to Two Primary Units.** The local agency must allow up to two primary units (i.e., one or two) on the subject parcel or, in the case of a lot split, up to two primary units on each of the resulting parcels.

**Units at least 800 square feet in size.** The local agency must allow each primary unit to be at least 800 square feet in size.

The terms "objective zoning standards," "objective subdivision standards," and "objective design review standards" mean standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant or proponent and the public official prior to submittal. Any objective standard that would physically preclude either or both of the two objectives noted above must be modified or

waived by the local agency in order to facilitate the development of the project, with the following two exceptions:

**Setbacks for Existing Structures.** The local agency may not require a setback for an existing structure or for a structure constructed in the same location and to the same dimensions as an existing structure (i.e., a building reconstructed on the same footprint).

**Four-Foot Side and Rear Setbacks.** SB 9 establishes an across-the-board maximum four-foot side and rear setbacks. The local agency may choose to apply a lesser setback (e.g., 0-4 feet), but it cannot apply a setback greater than four feet. The local agency cannot apply existing side and rear setbacks applicable in the single-family residential zone(s). Additionally, the four-foot side and rear setback standards are not subject to modification. (Gov. Code, §§ 65852.21, subd. (b)(2)(B); 66411.7, subdivision (c)(3).)

## One-Unit Development

(Reference: Gov. Code, §§ 65852.21, subd. (a); 65852.21, subd. (b)(2)(A))

SB 9 requires the ministerial approval of either one or two residential units. Government Code section 65852.21 indicates that the development of just one single-family home was indeed contemplated and expected. For example, the terms “no more than two residential units” and “up to two units” appear in the first line of the housing development-related portion of SB 9 (Gov. Code, § 65852.21, subd. (a)) and in the line obligating local agencies to modify development standards to facilitate a housing development. (Gov. Code, § 65852.21, subd. (b)(2)(A).)

## Findings of Denial

(Reference: Gov. Code, §§ 65852.21, subd. (d); 66411.7, subd. (d))

SB 9 establishes a high threshold for the denial of a proposed housing development or lot split. Specifically, a local agency’s building official must make a written finding, based upon a preponderance of the evidence, that the proposed housing development would have a specific, adverse impact, as defined in Government Code section 65589.5, subdivision (d)(2), upon public health and safety or the physical environment and for which there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. “Specific, adverse impact” means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code, § 65589.5, subd. (d)(2).)

## **Environmental Site Constraints**

(Reference: Gov. Code, §§ 65852.21, subd. (a)(2) and (a)(6); 66411.7, subd. (a)(3)(C) and (a)(3)(E))

A proposed housing development or lot split is not eligible under SB 9 if the parcel contains any of the site conditions listed in Government Code section 65913.4, subdivision (a)(6)(B-K). Examples of conditions that may disqualify a project from using SB 9 include the presence of farmland, wetlands, fire hazard areas, earthquake hazard areas, flood risk areas, conservation areas, wildlife habitat areas, or conservation easements. SB 9 incorporates by reference these environmental site constraint categories that were established with the passing of the Streamlined Ministerial Approval Process (SB 35, Chapter 366, Statutes of 2017). Local agencies may consult HCD's [Streamlined Ministerial Approval Process Guidelines](#) for additional detail on how to interpret these environmental site constraints.

Additionally, a project is not eligible under SB 9 if it is located in a historic district or property included on the State Historic Resources Inventory or within a site that is designated or listed as a city or county landmark or as a historic property or district pursuant to a city or county ordinance.

## **California Environmental Quality Act (CEQA)**

Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (n))

Because the approval of a qualifying project under SB 9 is deemed a ministerial action, CEQA does not apply to the decision to grant an application for a housing development or a lot split, or both. (Pub. Resources Code, § 21080, subd. (b)(1) [CEQA does not apply to ministerial actions]; CEQA Guidelines, § 15268.) For this reason, a local agency must not require an applicant to perform environmental impact analysis under CEQA for applications made under SB 9. Additionally, if a local agency chooses to adopt a local ordinance to implement SB 9 (instead of implementing the law directly from statute), the preparation and adoption of the ordinance is not considered a project under CEQA. In other words, the preparation and adoption of the ordinance is statutorily exempt from CEQA.

## **Anti-Displacement Measures**

(Reference: Gov. Code, §§ 65852.21, subd. (a)(3); 66411.7, subd. (a)(3)(D))

A site is not eligible for a proposed housing development or lot split if the project would require demolition or alteration of any of the following types of housing: (1) housing that is subject to a recorded covenant, ordinance, or law that restricts rents to levels affordable to persons and families of moderate, low, or very low income; (2) housing that is subject to any form of rent or price control through a public entity's valid exercise of its police power; or (3) housing that has been occupied by a tenant in the last three years.



## Lot Split Requirements

(Reference: Gov. Code, § 66411.7)

SB 9 does not require a local agency to approve a parcel map that would result in the creation of more than two lots and more than two units on a lot resulting from a lot split under Government Code section 66411.7. A local agency may choose to allow more than two units, but it is not required to under the law. A parcel may only be subdivided once under Government Code section 66411.7. This provision prevents an applicant from pursuing multiple lot splits over time for the purpose of creating more than two lots. SB 9 also does not require a local agency to approve a lot split if an adjacent lot has been subject to a lot split in the past by the same property owner or a person working in concert with that same property owner.

## Accessory Dwelling Units

(Reference: Gov. Code, §§ 65852.21, subd. (j); 66411.7, subd. (f))

SB 9 and ADU Law (Gov. Code, §§ 65852.2 and 65858.22) are complementary. The requirements of each can be implemented in ways that result in developments with both “SB 9 Units” and ADUs. However, specific provisions of SB 9 typically overlap with State ADU Law only to a limited extent on a relatively small number of topics. Treating the provisions of these two laws as identical or substantially similar may lead a local agency to implement the laws in an overly restrictive or otherwise inaccurate way.

**“Units” Defined.** The three types of housing units that are described in SB 9 and related ADU Law are presented below to clarify which development scenarios are (and are not) made possible by SB 9. The definitions provided are intended to be read within the context of this document and for the narrow purpose of implementing SB 9.

*Primary Unit.* A primary unit (also called a residential dwelling unit or residential unit) is typically a single-family residence or a residential unit within a multi-family residential development. A primary unit is distinct from an ADU or a Junior ADU. Examples of primary units include a single-family residence (i.e., one primary unit), a duplex (i.e., two primary units), a four-plex (i.e., four primary units), etc.

*Accessory Dwelling Unit.* An ADU is an attached or a detached residential dwelling unit that provides complete independent living facilities for one or more persons and is located on a lot with a proposed or existing primary residence. It includes permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel on which the single-family or multifamily dwelling is or will be situated.

*Junior Accessory Dwelling Unit.* A Junior ADU is a unit that is no more than 500 square feet in size and contained entirely within a single-family residence. A Junior ADU may include separate sanitation facilities or may share sanitation facilities with the existing structure.

The terms “unit,” “housing unit,” “residential unit,” and “housing development” mean primary unit(s) unless specifically identified as an ADU or Junior ADU or otherwise defined. This distinction is critical to successfully implementing SB 9 because state law applies different requirements (and provides certain benefits) to ADUs and Junior ADUs that do not apply to primary units.

**Number of ADUs Allowed.** ADUs can be combined with primary units in a variety of ways to achieve the maximum unit counts provided for under SB 9. SB 9 allows for up to four units to be built in the same lot area typically used for a single-family home. The calculation varies slightly depending on whether a lot split is involved, but the outcomes regarding total maximum unit counts are identical.

*Lot Split.* When a lot split occurs, the local agency must allow up to two units on each lot resulting from the lot split. In this situation, all three unit types (i.e., primary unit, ADU, and Junior ADU) count toward this two-unit limit. For example, the limit could be reached on each lot by creating two primary units, or a primary unit and an ADU, or a primary unit and a Junior ADU. By building two units on each lot, the overall maximum of four units required under SB 9 is achieved. (Gov. Code, § 66411.7, subd. (j).) Note that the local agency may choose to allow more than two units per lot if desired.

*No Lot Split.* When a lot split has not occurred, the lot is eligible to receive ADUs and/or Junior ADUs as it ordinarily would under ADU law. Unlike when a project is proposed following a lot split, the local agency must allow, in addition to one or two primary units under SB 9, ADUs and/or JADUs under ADU Law. It is beyond the scope of this document to identify every combination of primary units, ADUs, and Junior ADUs possible under SB 9 and ADU Law. However, in no case does SB 9 require a local agency to allow more than four units on a single lot, in any combination of primary units, ADUs, and Junior ADUs.

See HCD’s [ADU and JADU webpage](#) for more information and resources.

## Relationship to Other State Housing Laws

SB 9 is one housing law among many that have been adopted to encourage the production of homes across California. The following represent some, but not necessarily all, of the housing laws that intersect with SB 9 and that may be impacted as SB 9 is implemented locally.

**Housing Element Law.** To utilize projections based on SB 9 toward a jurisdiction’s regional housing need allocation, the housing element must: 1) include a site-specific inventory of sites where SB 9 projections are being applied, 2) include a nonvacant sites analysis demonstrating the likelihood of redevelopment and that the existing use will not constitute an impediment for additional residential use, 3) identify any governmental constraints to the use of SB 9 in the creation of units (including land use controls, fees,

and other exactions, as well as locally adopted ordinances that impact the cost and supply of residential development), and 4) include programs and policies that establish zoning and development standards early in the planning period and implement incentives to encourage and facilitate development. The element should support this analysis with local information such as local developer or owner interest to utilize zoning and incentives established through SB 9. Learn more on HCD's [Housing Elements webpage](#).

**Housing Crisis Act of 2019.** An affected city or county is limited in its ability to amend its general plan, specific plans, or zoning code in a way that would improperly reduce the intensity of residential uses. (Gov. Code, § 66300, subd. (b)(1)(A).) This limitation applies to residential uses in all zones, including single-family residential zones. “Reducing the intensity of land use” includes, but is not limited to, reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations, or any other action that would individually or cumulatively reduce the site’s residential development capacity. (Gov. Code, § 66300, subd. (b)(1)(A).)

A local agency should proceed with caution when adopting a local ordinance that would impose unique development standards on units proposed under SB 9 (but that would not apply to other developments). Any proposed modification to an existing development standard applicable in the single-family residential zone must demonstrate that it would not result in a reduction in the intensity of the use. HCD recommends that local agencies rely on the existing objective development, subdivision, and design standards of its single-family residential zone(s) to the extent possible. Learn more about [Designated Jurisdictions Prohibited from Certain Zoning-Related Actions](#) on HCD’s website.

**Housing Accountability Act.** Protections contained in the Housing Accountability Act (HAA) and the Permit Streaming Act (PSA) apply to housing developments pursued under SB 9. (Gov. Code, §§ 65589.5; 65905.5; 65913.10; 65940 et seq.) The definition of “housing development project” includes projects that involve no discretionary approvals and projects that include a proposal to construct a single dwelling unit. (Gov. Code, § 65905.5, subd. (b)(3).) For additional information about the HAA and PSA, see HCD’s [Housing Accountability Act Technical Assistance Advisory](#).

**Rental Inclusionary Housing.** Government Code section 65850, subdivision (g), authorizes local agencies to adopt an inclusionary housing ordinance that includes residential rental units affordable to lower- and moderate-income households. In certain circumstances, HCD may request the submittal of an economic feasibility study to ensure the ordinance does not unduly constrain housing production. For additional information, see HCD’s [Rental Inclusionary Housing Memorandum](#).